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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN87

Prevailing Rate Systems; Redefinition of Certain Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of several appropriated fund Federal Wage System (FWS) wage areas for pay-setting purposes. Based on reviews of Metropolitan Statistical Area (MSA) boundaries in a number of wage areas, OPM is redefining the following wage areas: Washington, DC; Hagerstown-Martinsburg-Chambersburg, MD; Detroit, MI; Jackson, MS; Meridian, MS; and Cleveland, OH.

DATES: Effective February 5, 2020.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: On August 14, 2019, OPM issued a proposed rule (84 FR 40297) to redefine the following counties:

- Madison County, VA, from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington, DC, area of application;
- Ottawa County, OH, from the Cleveland, OH, area of application to the Detroit, MI, area of application;
- Covington County, MS, from the Jackson, MS, area of application to the Meridian, MS, area of application.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus.

The 30-day comment period ended on September 13, 2019. OPM received two comments requesting OPM consider revising the definition of the Seattle-Everett-Tacoma, WA, FWS wage area. OPM must receive the advice of FPRAC before making any changes to wage area boundaries. The comments are therefore beyond the scope of the proposed rule.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In Appendix C to subpart B amend the table by revising the wage area listings for the District of Columbia and the States of Maryland, Michigan, Mississippi, and Ohio to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

DISTRICT OF COLUMBIA

Washington, DC

Survey Area

District of Columbia:
  Washington, DC
Maryland:
  Charles
  Frederick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria

Fairfax
Falls Church
Manassas
Manassas Park
Virginia (counties):
Arlington
Fairfax
Loudoun
Prince William

Area of Application. Survey area plus:

Maryland:
Calvert
St. Mary's
Virginia (city):
Fredericksburg
Virginia (counties):
Clarke
Culpeper
Fauquier
King George
Madison
Rappahannock
Spotsylvania
Stafford
Warren
West Virginia:
Jefferson

* * * * *

MARYLAND

Baltimore

Survey Area

Maryland (city):
Baltimore
Maryland (counties):
Anne Arundel
Baltimore
Carroll
Harford
Howard

Area of Application. Survey area plus:

Maryland:
Queen Anne's

Hagerstown-Martinsburg-Chambersburg

Survey Area

Maryland:
Washington
Pennsylvania:
Franklin
West Virginia:
Berkeley

Area of Application. Survey area plus:

Maryland:
Allegany
Garrett
Pennsylvania:
Fulton
Virginia (cities):
Harrisonburg
Winchester
Virginia (counties):
Frederick
Page
Rockingham
Shenandoah
West Virginia:
Hampshire
Hardy
Mineral
Morgan

* * * * *

MICHIGAN

Detroit

Survey Area

Michigan:
Lapeer
Livingston
Macomb
Oakland
St. Clair
Wayne

Area of Application. Survey area plus:

Michigan:
Arenac
Bay
Clare
Clinton
Eaton
Genesee
Gladwin
Gratiot
Huron
Ingham
Isabella
Lenawee
Midland
Monroe
Saginaw
Sanilac
Shiawassee
Tuscola
Washtenaw
Ohio:
Fulton
Lucas
Ottawa
Wood

Northwestern Michigan

Survey Area

Michigan:
Delta
Dickinson
Marquette

Area of Application. Survey area plus:

Michigan:
Alcona
Alger
Alpena
Antrim
Baraga
Benzie
Charlevoix
Cheboygan
Chippewa
Crawford
Emmet
Gogebic
Grand Traverse
Houghton
Iosco
Iron
Kalkaska
Keweenaw
Leelanau
Luce
Mackinac
Manistee
Menominee
Missaukee
Montmorency
Ogemaw
Ontonagon
Oscoda
Otsego
Presque Isle
Roscommon
Schoolcraft
Wexford

Southwestern Michigan

Survey Area

Michigan:
Barry
Calhoun
Kalamazoo
Van Buren

Area of Application. Survey area plus:

Michigan:
Allegan
Berrien
Branch
Cass
Hillsdale
Ionia
Jackson
Kent
Lake
Mason
Mecosta
Montcalm
Muskegon
Newaygo
Oceana
Osceola
Ottawa
St. Joseph

* * * * *

MISSISSIPPI

Biloxi

Survey Area

Mississippi:
Hancock
Harrison
Jackson

Area of Application. Survey area plus:

Mississippi:
George
Pearl River
Stone

Jackson

Survey Area

Mississippi:

Hinds
Rankin
Warren
Area of Application. Survey area plus:
Mississippi:
Adams
Amite
Attala
Claiborne
Copiah
Franklin
Holmes
Humphreys
Issaquena
Jefferson
Jefferson Davis
Lawrence
Lincoln
Madison
Marion
Pike
Scott
Sharkey
Simpson
Smith
Walthall
Wilkinson
Yazoo

Meridian

Survey Area

Alabama:
Choctaw
Mississippi:
Forrest
Lamar
Lauderdale
Area of Application. Survey area plus:
Alabama:
Sumter
Mississippi:
Clarke
Covington
Greene
Jasper
Jones
Kemper
Leake
Neshoba
Newton
Perry
Wayne

Northern Mississippi

Survey Area

Mississippi:
Clay
Grenada
Lee
Leflore
Lowndes
Monroe
Oktibbeha
Area of Application. Survey area plus:
Mississippi:
Alcorn
Bolivar
Calhoun
Carroll
Chickasaw
Choctaw
Coahoma
Itawamba
Lafayette (Does not include the Holly Springs National Forest portion)
Montgomery
Noxubee
Pontotoc (Does not include the Holly Spring National Forest portion)
Prentiss
Quitman
Sunflower
Tallahatchie
Tishomingo
Union (Does not include the Holly Springs National Forest portion)
Washington
Webster
Winston
Yalobusha

* * * * *

OHIO

Cincinnati

Survey Area

Indiana:
Dearborn
Kentucky:
Boone
Campbell
Kenton
Ohio:
Clermont
Hamilton
Warren
Area of Application. Survey area plus:
Indiana:
Franklin
Ohio
Ripley
Switzerland
Union
Kentucky:
Bracken
Carroll
Gallatin
Grant
Mason
Pendleton
Ohio:
Adams
Brown
Butler
Highland

Cleveland

Survey Area

Ohio:
Cuyahoga
Geauga
Lake
Medina
Area of Application. Survey area plus:
Ohio:
Ashland
Ashtabula
Carroll
Columbiana
Erie
Huron
Lorain
Mahoning
Portage
Sandusky
Seneca
Stark
Summit
Trumbull
Wayne
Pennsylvania:
Mercer

Columbus

Survey Area

Ohio:
Delaware
Fairfield
Franklin
Licking
Madison
Pickaway
Area of Application. Survey area plus:
Ohio:
Coshocton
Crawford
Fayette
Guernsey
Hancock
Hardin
Hocking
Holmes
Knox
Marion
Morrow
Muskingum
Perry
Richland
Ross
Union
Wyandot

Dayton

Survey Area

Ohio:
Champaign
Clark
Greene
Miami
Montgomery
Preble
Area of Application. Survey area plus:
Indiana:
Randolph
Wayne
Ohio:
Auglaize
Clinton
Darke
Logan
Shelby

* * * * *

[FR Doc. 2019–28009 Filed 1–3–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Document Number AMS–ST–19–0004]

Regulations and Procedures Under the Plant Variety Protection Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations, fees for services, and procedures established under the Plant Variety Protection Act. The revisions are necessary to conform with recent amendments to the Plant Variety Protection Act, which added authority for the Plant Variety Protection Office to issue certificates of protection for varieties of plants that are reproduced asexually. This rule adds references to the term ''asexual reproduction'' to the regulations established under the Plant Variety Protection Act and establishes procedures for obtaining variety protection for asexually reproduced plant varieties. This rule also modernizes the regulations by simplifying the fee schedule for PVPO services and updating the regulations relating to administrative procedures to reflect current business practices.

DATES: *Effective date:* January 6, 2020.

Delayed enforcement date: Enforcement of the requirement to deposit propagating material for asexually reproduced varieties is delayed until January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Jeffery Haynes, Deputy Commissioner, Plant Variety Protection Office, AMS Science and Technology Program, USDA; 1400 Independence Avenue SW, Room 4512–S, Stop 0274, Washington, DC 20250–0002; telephone: (202) 260–8983; email: *Jeffery.Haynes@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 10108 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) (2018 Farm Bill) amended the Plant Variety Protection Act of 1970, as amended (7 U.S.C. 2321–2582) (Act), by adding a definition for the term ''asexually reproduced'' as it pertains to plant propagation and adding authority to offer intellectual property protection to breeders of new varieties of plants developed through asexual reproduction. The Agricultural Marketing Service's (AMS) Plant Variety Protection Office (PVPO) processes applications and grants certificates of protection for plant varieties under the Act. PVPO also administers the Plant Variety Protection (PVP) regulations established under the Act at 7 CFR part 97 (regulations).

AMS published a proposed rule in the **Federal Register** on July 12, 2019 (84 FR 33176). The proposed rule invited comments on proposed changes to the regulations that correspond with amendments to the Act. AMS allowed a sixty-day public comment period for interested parties to submit comments. The comment period ended September 10, 2019. AMS received six comments on the proposed rule. In anticipation of the regulatory changes, AMS also sought approval from the Office of Management and Budget (OMB) for revisions to the information collection forms PVPO uses to administer the PVP program. AMS announced the forms' revisions in the **Federal Register** on May 14, 2019 (84 FR 21314). AMS received two comments on the forms' revisions during the sixty-day comment period that ended July 15, 2019. Both submissions also included comments pertaining to the proposed rule, so AMS also considered those two comments in the development of this final rule. Based on the comments received, AMS modified the provisions in the proposed rule related to required deposits of propagating material with applications for protection under the Act. The comments and the modifications are discussed later in this document.

Background Information

The Act authorizes PVPO to provide intellectual property protection to breeders or owners of new plant varieties to facilitate the marketing of those new varieties. Currently, owners can apply for and receive certificates that protect new varieties of seed- and tuber-propagated plants for 20 years, or 25 years for seed-propagated vines and trees. A certificate of plant variety protection is granted to the owner of a variety after examination by PVPO indicates that the variety is new, distinct from other varieties, genetically uniform, and stable through successive generations. PVPO-issued certificates are recognized worldwide and facilitate filing for plant variety protection in other countries. Certificate owners have the right to exclude others from marketing and selling protected varieties, manage the use of their varieties by other breeders, and enjoy legal protection of their work.

Asexually reproduced varieties are those derived using vegetative material, other than seed, from a single parent, including cuttings, grafts, tissue cultures, and root divisions. These varieties are a significant and growing portion of the industry. Developers of asexually reproduced varieties desire access to the internationally recognized intellectual property rights that can only be obtained through PVPO-issued certificates. 2018 Farm Bill amendments to the Act make that possible.

Provisions

This final rule revises the Plant Variety Protection regulations by adding references to asexual plant reproduction, as appropriate, to the regulations that apply to the protection of seed and tubers. Revised § 97.1 extends the protection breeders can obtain from PVPO to plants propagated through asexual means. As with other plants covered by the Act, plant breeders can receive certificates that protect asexually reproduced plant varieties for 20 years, or 25 years for trees and vines. Revisions to the definition of the term *sale for other than seed purposes* in § 97.2 add ''propagating material'' to that term as used in the regulations.

Revised §§ 97.6 and 97.7 require that except for during a temporary enforcement delay explained below, applications for plant variety protection for asexually propagated varieties must be accompanied by the commitment to deposit propagating material to a public repository approved by the Commissioner. Such deposits must be maintained for the duration of the certificate.

Section 97.7(d) specifies that original deposits of propagating material for seed- and tuber-reproduced plants must be made within three months of the notice of certificate issuance. Tuber-reproduced plants are already eligible for plant variety protection under the Act and regulations. Addition of the reference to tuber-reproduced plants in § 97.7(d) corrects inadvertent omission of that reference in previous revisions to the regulations. Section 97.7 also provides for waiver of the time requirements for making original deposits for good cause, such as delays in obtaining a phytosanitary certificate for the importation of propagating material for deposit.

The requirement to make deposits of propagating material to accompany applications for variety protection under the Act applies to asexually reproduced varieties on the effective date of this rule. However, revised § 97.7(d)(3) provides that enforcement of that requirement is delayed through January 6, 2023. Stakeholder feedback and comments submitted in response to the proposed rule suggest that it may sometimes be technically infeasible to deposit or store propagating material for certain asexually reproduced varieties.

AMS is delaying enforcement of the deposit requirement for asexually reproduced varieties to give PVPO time to determine the number and type of deposits that may be technically infeasible at this time. The three-year delay will also allow PVPO and the industry to identify possible solutions to technical problems. Although applicants for protection of asexually reproduced varieties are not required to make original deposits during the delayed enforcement period, applicants may make the deposits if they choose.

Revised § 97.7(d)(2) provides that after the delayed enforcement period, PVP applicants may request and be granted delay waivers on a case-by-case basis. The revised introductory paragraph of § 97.7(d) as proposed is further revised to clarify that the granting of such waivers will be based on the repository's determination of whether it is feasible to deposit propagating material for certain asexually reproduced plants. For instance, the repository may report to PVPO that it is infeasible to store the propagating material of asexually reproduced grafted trees because of the space required to do so, or because the repository is unable to prepare or maintain a viable tissue culture that can be stored for the life of the protection certificate or grow out true to type upon recovery. Applicants who obtain delay waivers must agree to maintain the propagating material at a specific physical location that PVPO could inspect upon request. Applicants who obtain delay waivers must also agree to provide propagating material, when it is needed, within three months of PVPO's request. PVPO will consider a certificate abandoned if the applicant fails to provide the requested propagating material within the three-month timeframe. New § 97.7(d)(2)(iii) specifies that delay waivers are effective until PVPO notifies the applicant that the technical infeasibility has been resolved. Once so notified, the applicant must deposit propagating material within three months. If the applicant fails to make the required deposit, PVPO will consider the certificate abandoned.

Revised § 97.19(c) replaces the reference to ''name of the kind of seed,'' which appears on PVPO posts about pending applications, with the more generic reference to ''name of the crop,'' to accommodate all types of plant material that can be protected, including asexual reproduction material. This final rule replaces references to seed deposits in § 97.104 with references to seed and propagating material deposits made in the application and certification processes. Previously, § 97.141 of the regulations allowed owners of plant varieties for which certificates had been issued to prohibit unauthorized multiplication of the seed of those varieties. Revised § 97.141 extends that protection to prohibit the unauthorized multiplication of propagating material of those varieties. Similarly, revised § 97.142 allows owners of protected plant varieties to prohibit unauthorized increases of all propagating material released for testing or increase. Previously, § 97.142 only specified such prohibition for seed and reproducible plant material released for testing or increase.

This final rule modernizes the regulations to reflect current industry and government practices. The regulations were most recently revised in 2005 and contained obsolete or incomplete references to processes that have changed over the years. For instance, when color is a distinguishing characteristic of a plant variety, the color can be described according to any recognized color charts used in the industry for that purpose. Previously, § 97.9 provided one example of a named color chart—the Nickerson Color Fan, which has long been in use. This final rule expands the list of examples in § 97.9 to include two additional examples of color charts that can be referenced, the Munsell Book of Color and the Royal Horticultural Society Colour Chart, as well as any other commonly recognized color charts. A further revision to § 97.9 clarifies that color photos that accompany PVP applications may be submitted by email, as has been the practice for several years.

Many of the changes in this final rule pertain to PVPO's application process, including the timing of different steps in the process. PVPO expects the changes to simplify the requirements for applicants and to expedite the issuance of variety protection certificates, which would benefit their customers. Previously, applicants paid fees associated with certain steps of the application process as they went through the process, but revised § 97.6(c) requires all portions of the application fee—for filing an application, for application examination by PVPO, and for certificate issuance—to be paid at the time of application. This final rule makes corresponding revisions to §§ 97.103(a) and 97.104(a) and (c). Revised § 97.20(a) specifies that, subject to certain exceptions, filing and examination fees are not refundable after an application is deemed by PVPO to be abandoned. Revised § 97.23(c) requires payment of new filing and examination fees for reconsideration of an original application that has been withdrawn by the applicant. Previously, § 97.101—Notice of Allowance specified that an applicant must pay the certificate fee within one month of the notice of allowance. Revised § 97.101 requires the applicant to verify the names of the plant variety and the owner within 30 days. Under revised § 97.101, the applicant may opt instead to withdraw the application before the certificate is issued, in which case the certificate fee portion of the application fee would be refunded. After the 30 days, an administrative fee for delayed response will be charged to the applicant or deducted from the certificate fee refund, if the applicant chooses to withdraw the application. If the applicant fails to respond at all, the application will be considered abandoned, and no fees will be refunded. Revisions to § 97.178 removed references to searches and search fees and specify that the examination fee may be refunded if an application is either voluntarily withdrawn or abandoned before the examination has begun. Section 97.178 is further revised to provide that the certificate issuance fee will be refunded if an application is voluntarily withdrawn or abandoned after an examination, but before a certificate is issued.

This final rule reorganizes and simplifies the schedule of fees and charges for PVPO services in § 97.175. The revisions consolidate and simplify the fee schedule to reflect the revisions described above. Fee amounts for filing an application, examination, certificate issuance, application reconsideration, revival of abandoned applications, and filing appeals with the Commissioner or the Secretary have not been changed from the previous fee schedule. However, flat fees for PVPO services like reproducing records, authentication, and correction or reissuance of a certificate are no longer specified separately in the fee schedule in the regulations and will be charged at rates prescribed by the Commissioner, not to exceed $97 per employee hour. Previously those services were estimated to average $107 per employee hour. Office automation and other process improvements make the proposed decreases feasible. One such improvement is the ability to process fee payments through electronic payment systems. Revised § 97.177 specifies that payments can be made through the Plant Variety Protection system or through *pay.gov*, although payments by check or money order will still be allowed.

This final rule replaces obsolete references in the regulations to the

Official Journal of the Plant Variety Protection Office with references to the PVPO website, which is the current business portal used by PVPO to provide service to its customers. Another revision adds reference to the PVPO website to the section. Such changes are made to §§ 97.5(c), 97.7(c)(5), 97.14(d), 97.19, 97.403(d), and 97.800. Such changes are also made to what were paragraphs (b) and (d) of § 97.104, but which have been redesignated paragraphs (a) and (c) through other revisions to the section. Further revised § 97.5(c) provides that applicants can request forms and information at a PVPO email address. Revised § 97.12 clarifies that PVPO can use mail or email to notify applicants of the filing number and effective filing date of applications received by PVPO. Revised § 97.23(c) specifies that refiling a voluntarily withdrawn original application must be accompanied by payment of a new filing and examination fee, while § 97.23(d) has been removed altogether, as it contained obsolete references to applications pending on April 4, 1995. An additional revision to the section previously designated § 97.104(b), but now redesignated § 97.104(a), removes reference to the return of seed samples deposited with applications, since that is no longer the practice of PVPO, and provides that samples of seed and propagating material associated with abandoned applications and certificates will be retained or destroyed by the repository. This final rule corrects a reference in § 97.500 to the U.S. Court of Appeals for the Federal Circuit, to whom applicants may appeal if they are dissatisfied with decisions of the Secretary related to plant variety protection issues. Finally, this rule revises the heading for § 97.600 by replacing the term ''Rules of Practice'' with the term ''Administrative procedures'' in accordance with Code of Federal Regulations naming conventions.

Comments

The six comments submitted in response to the proposed rule were generally supportive of the proposed revisions to the regulations. Some commenters said they advocated the Farm Bill amendments to the Act. Commenters recognized the value of the protection obtainable through PVPO services and welcomed the addition of protection for asexually reproduced plants particularly, noting that it would give plant breeders additional options regarding intellectual property protection, which would in turn spur innovation, benefitting growers and consumers. Finally, commenters welcomed proposed efforts to modernize the regulations through technical and administrative changes to the regulations.

As explained earlier in this document, AMS received two additional comments during the comment period that were filed in response to a related notice on proposed revisions to the information collection forms used in the PVP program. In addition to addressing the information collection, these submissions included comments and questions about the proposed rule. The portions of these comments related to the information collection are addressed in the Paperwork Reduction Act section below. The portions of these comments related to the proposed rule are addressed here.

Deposit Requirement

AMS proposed to require that, in conjunction with a PVP application, a deposit of propagating material be made to a public repository approved by the Commissioner, and that the deposit be maintained for the duration of the certificate. As with deposits of seed and tubers, AMS proposed requiring deposits for asexually reproduced plants be made within three months after notice of certificate issuance. To address situations in which it is technically infeasible to deposit or store propagating materials for certain asexually reproduced plants, AMS proposed to allow applicants to request delay waivers that would let them provide a deposit within three months of a PVPO request when needed. All but two of the comments addressed the proposed deposit requirement.

Comment: One comment from an industry trade association supported the proposed deposit requirement, explaining that the industry benefits from the public availability of germplasm in repositories and that such deposits can be referred to during dispute settlements. The commenter also suggested that placing germplasm in public repositories would alleviate the breeder's burden for maintaining an asexually propagated variety beyond its commercial lifespan. The commenter assumed that repository fees for deposits of propagating material would be the same regardless of the type of protection the breeder is seeking, for example, a utility patent or a PVP certificate.

AMS Response: AMS agrees that germplasm deposits are useful in resolving disputes and that maintaining a deposit in a repository would relieve the breeder's burden for doing so beyond the variety's commercial lifespan. We believe requiring a deposit also ensures that upon expiration of the term of protection the propagating material will be available to interested parties. AMS understands that repository fees may differ for handling different types of propagating material. For instance, storing viable seed would probably be much less complicated than maintaining propagating material for tree or shrub specimens. We presume that a repository's fees would depend on a variety of factors, including the services provided, storage logistics, and duration. We are not aware that the purpose for the deposit would dictate its cost. Accordingly, this final rule makes no changes to the proposed rule based on these comments.

Comment: Three comments, including one from an individual, one from a plant breeders' marketing service, and one representing two associations of plant breeders, expressed concern about the cost of the required deposit, as described in the Regulatory Flexibility Analysis of the proposed rule. Commenters suggested that a $3,000 deposit fee would be prohibitive for many breeders and could deter them from seeking protection through the PVP system. Commenters asserted that other member countries within the International Union for the Protection of New Varieties of Plants (UPOV) [1] do not require breeders to make deposits for asexually reproduced plants, although they may for seed-propagated varieties, in order to obtain protection. One commenter suggested that rather than making deposits, applicants be required to declare where the plant will be maintained during its term of protection, similar, according to the commenter, to obligations under Canadian Plant Breeders' Rights.[2] Commenters believed that the underlying rationale for AMS's proposed deposit requirement was to ensure public access to the propagating material after the protection expires. But commenters argued that plants are commercialized, are maintained by the breeders, and/or may be part of public collections in landscapes and botanical gardens, and thus would likely be readily available to interested parties.

AMS Response: AMS appreciates that paying the repository's fee at the same time as paying the PVP application fee could seem prohibitive for some

[1] International Union for the Protection of New Varieties of Plants; *https://upov.int/portal/index.html.en*; accessed 9/23/2019.

[2] Canadian Food Inspection Agency, Plant Breeders' Rights Office; *https://www.inspection.gc.ca/plants/plant-breeders-rights/eng/1299169386050/1299169455265*; accessed 9/20/2019.

applicants. Because protection for asexually reproduced plants is new for PVPO, we can only speculate about how many protection applications might be submitted and how many applicants would be deterred from seeking protection under the amended Act because of the deposit cost. In the regulatory analysis for this rule, we estimated that 50 applicants would apply for protection for asexually reproduced plants each year. At this time, we don't know how many deposits would be technically infeasible and eligible for delay waivers.

Accordingly, based on comments and other information, AMS revised the rule as proposed to provide for delayed enforcement of the deposit requirement for asexually reproduced variety PVP applications until January 6, 2023. Applicants are not required to make propagating material deposits during that period but are required to make declarations that they will maintain propagating material at a specific physical location PVPO could inspect and that they will provide propagating material within three months of PVPO's request. We believe a delayed enforcement date will allow PVPO to get a feel for the number and type of deposits that are technically infeasible at this time. Further, a delayed compliance date would give PVPO time to work with the industry to identify and resolve feasibility problems. Although it is not required during the delayed enforcement period, applicants who choose to do so may submit a deposit of propagating material to the repository as provided in the regulations.

To date, AMS has identified and approved only one facility that could serve as a repository for deposits of propagating material for asexually reproduced plants. Current deposit fees for propagating material from asexually propagated varieties at that facility are $3,000 at the time of the deposit and cover preparation of the tissue culture and maintenance of the deposit for the term of the protection (20 years for herbaceous plants, 25 years for trees and vines) plus an additional 10 years beyond the protection's expiration. Thus, over the total life of the deposit (30 or 35 years), the average annual cost is minimal. AMS believes the cost to be appropriate and reasonable, considering the value of the propagating material preserved.

Commenters are correct in that neither other UPOV member countries nor the U.S. Plant Patent Act require propagating material deposits for asexually reproduced plants at this time. The Plant Variety Protection Act requires deposits with PVP applications for seed and tuber-propagated plants, and PVPO intends to make the application process for all plant types consistent. Therefore, the final rule requires applicants to make deposits with PVP applications for asexually reproduced plants, subject to the delayed enforcement and waiver provisions discussed above.

As explained in the response to an earlier comment, one of the reasons for requiring deposits with protection applications is to ensure that the propagating material will still be available when the protection expires. Commenters are correct that some protected varieties may still be publicly or commercially available after the protection expires, but there is no guarantee that they would. Plants in public areas may be replaced over time, and the commercial lifespan of a plant variety may be much shorter than the term of its protection. Therefore, this final rule continues to require deposits of propagating material for varieties protected under the Act in PVPO-approved repositories.

AMS finds merit in the suggestion that protected plant varieties or their propagating material be maintained by the owner, although we do not believe it should be the permanent solution to preserving protected varieties' propagating material. Requiring owners to maintain propagating material would strengthen the value of protection for varieties for which PVPO grants delay waivers for technical infeasibility purposes. Accordingly, based on comments, AMS revised the rule as proposed to provide that applicants who request delay waivers due to technical difficulties with depositing propagating materials must maintain the propagating material at a specific physical location, subject to PVPO inspection. AMS further revised the delay waiver provision in the rule as proposed to clarify that the delay waiver is effective until PVPO notifies the applicant that the technical infeasibility has been resolved. The applicant will have three months from notification to make the required deposit. PVPO will consider the PVP certificate abandoned if the applicant fails to make the required deposit.

Comment: One comment from an association of plant breeders, producers, and traders questioned the value of the obligatory deposit for asexually reproduced plants. The comment stated that the provision and storage of tissue culture material is complicated and that such material is prone to mutations. The commenter suggested it might be more convenient to store a sample of the new plant's DNA instead, which could be compared to varieties in the market in case of doubt about their origin.

AMS Response: As we discussed in an earlier comment response, AMS acknowledges that providing and maintaining tissue cultures is complicated. The suggestion about storing DNA is interesting, and in the future, it may be possible to use DNA to satisfy distinctness tests. But at this time, we cannot reproduce a plant from its DNA alone. It's essential to preserve propagating material under PVP certification to ensure a protected plant can be reproduced when needed. Accordingly, this final rule continues to require PVP applicants to make propagating material deposits, subject to the delayed enforcement and waiver provisions described above.

Comment: One comment from an individual noted that the potato industry has been depositing tissue culture samples with the National Center for Genetic Resources Preservation (NCGRP) [3] depository since 1996, when a previous amendment to the Act [4] allowed tuber propagated plants to be protected but did not allow for fees to be charged for deposits. According to the commenter, NCGRP's cost for storing potato tissue cultures was about $3,200 per deposit. The commenter asked whether potato breeders would have to pay $3,000 per deposit under the proposed rule.

AMS Response: This rule makes no changes to the deposit requirements for potato varieties. Now known as the National Laboratory for Genetic Resources Preservation (NLGRP), the repository at a USDA Agricultural Research Service facility in Fort Collins, Colorado, will continue to serve as the approved repository for potato tissue cultures. AMS understands that NLGRP currently charges $2,400 per application deposit. NLGRP stores the tissue culture for 20 years. The cost cited earlier for the deposit of material for asexually reproduced plants is based on a repository that specializes in asexually reproduced plants and that would prepare the tissue cultures and provide 30–35 years of storage.

Comment: Aside from concerns about the cost of the deposit requirement, commenters unanimously supported the proposed delay waiver, with the

[3] Agricultural Research Service, USDA. The National Laboratory for Genetic Resources Preservation (NLGRP) (formerly NCGRP) is located at the Center for Agricultural Resources Research in Fort Collins, Colorado. *https://www.ars.usda.gov/plains-area/fort-collins-co/center-for-agricultural-resources-research/*; accessed 9/24/2019.

[4] The *Plant Variety Protection Act Amendments of 1994,* Public Law 103–349, October 6, 1994.

stipulation that propagating material be produced within three months of PVPO's request. Commenters noted that establishing and maintaining propagating material in vitro can sometimes be difficult, and that the waiver option would address technical infeasibilities. One commenter suggested expanding the proposed waiver option to include waivers for plants the breeder attests will be placed in the public domain as a matter of their commercialization.

AMS Response: As discussed earlier, AMS acknowledges there may be technical difficulties associated with deposits of propagating material for some asexually reproduced plants. It may be difficult to successfully preserve tissue cultures of some asexually reproduced varieties over the long term by cryogenic freezing or other means of cold storage. The delayed enforcement provision described earlier will allow PVPO and the industry to explore those issues before enforcing compliance with the deposit requirement.

As with the unknown longevity of commercialized plant varieties, there is no way to guarantee that varieties placed in the public domain will be available for the term of protection under the Act. Thus, waivers attesting that plant varieties would be placed in the public domain could not provide adequate assurance. As described in an earlier comment response, AMS revised the rule as proposed to provide that applicants who request delay waivers due to technical difficulties with depositing propagating materials must maintain the propagating material at a specific physical location, subject to PVPO inspection. AMS further revised the delay waiver provision in the rule as proposed to clarify that the delay waiver is effective until PVPO notifies the applicant that the technical infeasibility has been resolved. The applicant will have three months from notification to make the required deposit. PVPO will consider the PVP certificate abandoned if the applicant fails to make the required deposit. AMS made no further changes to the rule as proposed based on these comments.

Comment: The commenter representing plant breeder associations asked AMS to clarify several points regarding the proposed propagating material deposit. Relaying questions from stakeholders, the commenter asked how the germplasm deposit system would operate with respect to germplasm access by other breeders. The commenter also asked whether other breeders would have access to varieties for comparison purposes. The commenter asked what rights, if any, the breeder would have over the deposit, and whether the breeder would be obligated to allow public access to the deposit at the end of the grant title. Finally, the commenter asked what rights the PVP office would have to the deposit.

AMS Response: The public does not have access to germplasm deposits during the life of protection. Breeders must purchase comparison varieties from the market or request plant material from the owners of a protected variety. Owners have access to their deposits once they are placed with the repository. For instance, an owner may need to request propagating material from the deposit as a backup to their own supply if it is destroyed or lost. Owners cannot prohibit public access to the deposit at the end of the protection term. Only varieties for which protection has expired, or public varieties, are freely available to the public. PVPO has access to germplasm deposits for examination purposes and for resolving any disputes about a variety during the term of protection. AMS is making no changes to the rule as proposed based on these comments.

Distinctness Requirement

Currently, to obtain variety protection under the Act, applicants must submit, among other things, a complete description of the candidate plant's origin and breeding history. The applicant must describe the characteristics by which the new plant can be distinguished from its parents. The applicant must also supply a statement of uniformity reporting the level of variability in any characteristics of the new variety. And finally, the applicant must show that the new plant's characteristics are stable within its progeny. Collectively, this information is known in the industry as a Distinctness, Uniformity, and Stability (DUS) report. In response to AMS's proposal to extend variety protection to asexually reproduced plant varieties, two comments from trade associations and one comment from a research university's technology and licensing program posed several technical questions about the variety examination process, including use of DUS reports and other requirements.

Comment: Two commenters asked whether PVPO would adopt the UPOV Technical Guidelines [5] related to distinctness for each crop. All three commenters advocated PVPO acceptance of UPOV DUS examination reports in lieu of some standard PVPO application requirements to reduce duplication of work and cost breeders have already expended to obtain variety protection in other countries. One commenter advocated establishing a set of minimum requirements for each crop to enable PVPO to compare varieties from different applicants. One of the commenters, assuming UPOV requirements would be used until PVPO could update one of its application forms to accommodate asexually reproduced plants, asked whether the UPOV requirements would remain in place permanently or be replaced by PVPO forms. One commenter suggested technical questionnaires for PVP applications should follow UPOV questionnaires and not be overly detailed.

AMS Response: PVPO is a member of UPOV, which is the international convention for plant variety protection. UPOV standards are agreed upon by its 88 country members. As a member, PVPO recognizes and employs many UPOV protocols where they are consistent with the statutory requirements of the Act. As explained in the Paperwork Reduction Act section of this document, AMS, in conjunction with revising the regulations to provide for protection of asexually reproduced plant varieties, revised the package of forms used in the PVP program. The Table of Characteristics for each crop in UPOV's Test Guidelines is included in the crop specific Exhibit C form of the PVP application. Consistent with the Table of Characteristics' asterisked (prioritized) characteristics,[6] PVPO considers those characteristics minimum requirements in the PVP application. Because PVPO has already updated its application forms, there is no need to temporarily rely on UPOV requirements or to provide for a transition period before applying the PVP requirements established in this rule.

PVPO will consider accepting DUS reports applicants have used to obtain variety protection in other countries on a case-by-case basis. The UPOV Test Guidelines are instructions used by each UPOV member country, including the United States, to create their own DUS report that references the Table of Characteristics. The applicant must work with PVPO to determine whether

[5] Commenters refer to UPOV Technical Guidelines, but AMS assumes they mean the UPOV Test Guidelines, as shown at: *https://www.upov.int/test_guidelines/en/*; accessed 9/23/2019.

[6] Asterisked characteristics (denoted by *) are those included in the UPOV Test Guidelines which are important for the international harmonization of variety descriptions and should always be examined for DUS and included in the variety description by all members of the Union, except in certain circumstances.

the applicant's country's report provides the information necessary to approve a PVP application. PVPO collects only that information necessary to establish whether a new plant is distinct from other plants. PVPO's examination process, including the questionnaire, incorporates only those questions necessary to provide variety protection under the Act and reflects the UPOV questionnaire. The questionnaire may evolve over time as the industry and PVPO gain experience examining applications for variety protection for asexually propagated plants. Accordingly, AMS is making no changes to the rule as proposed based on these comments at this time.

Comment: Commenters asked whether PVPO would continue to recognize breeder-conducted testing and breeders' variety descriptions. One commenter also encouraged PVPO to continue providing and publishing detailed breeding histories included in applications because the commenter believes the histories are useful to other breeders, and along with other elements of the PVP application, make its protection one of the world's strongest.

AMS Response: AMS will continue to recognize breeder-conducted testing and breeders' variety descriptions. AMS agrees that providing detailed breeding histories is helpful to other breeders and will continue to publish breeding histories included in PVP applications once the new variety is issued a certificate of protection. Breeding histories are published on the PVPO website. Accordingly, AMS is making no changes to the rule as proposed based on these comments.

Fee Structure

PVPO fees are established in the regulations and are published on its website.[7] The current total cost for variety protection is $5,150, including separate fees for distinct steps of the application and certification process. PVPO also charges for additional services, such as reviving abandoned applications or reproducing records. Currently, applicants pay fees associated with distinct steps of the application process in advance, as they go along. Charges for other services, including clerical work, are payable when the services are requested.

The proposed rule included a revised fee structure that would consolidate all the fees for the application and certification process into one payment due in advance at the time of application. AMS proposed no changes to the total cost of application and certification, nor to the rates for individual elements of the application process. AMS proposed changing the fee structure for certain additional services by eliminating flat fees for those services and reducing the effective hourly rate charged. Two comments addressed the proposed revisions to the fee structure.

Comment: Both comments from trade associations pointed out that variety protection offered by PVPO is more costly than that available from the U.S. Patent Office. Commenters speculated that costs would impact small businesses particularly and could deter many from using PVPO services. Both commenters suggested AMS consider implementing a tiered system that would adjust fees for small businesses and individuals.

AMS Response: PVPO acknowledges the cost of obtaining a PVP certificate is more costly than obtaining a plant patent from the U.S. Patent Office. The PVP program is funded by user fees. PVPO fees are based on the actual cost of providing services, including examinations, office expenses, and agency overhead. Fees are the same for all applicants. AMS does not believe it would be appropriate or practical to introduce a tiered pricing system based on business size. AMS proposed to consolidate the application and certification fees into one up-front charge because PVPO has considerably reduced the time it takes to approve a PVP application over the years. Whereas the process used to take up to five years, PVP can now complete the work in as little as 18 months. Thus, the waiting period between each step of the process is much shorter. Requiring full payment up front is expected to further streamline the application and certification process by eliminating the need to contact applicants and wait for payments before progressing to the next step. Collecting the fee up front reduces administrative expense and allows PVPO to continue providing faster service at the same, or in some cases lower, cost. Thus, AMS is making no changes to the rule as proposed based on these comments.

Miscellaneous Comments

Three comments made suggestions or requested clarification about PVP regulations.

Comment: One comment from an individual suggested that labels on asexually propagated plants should include information about how the plant was propagated.

AMS Response: The Act and PVP regulations allow for labeling of a protected variety, but there is no statutory requirement to provide specific information. PVP labeling regulations only specify the terminology that may be used on plant labels for which the owners have applied for or obtained U.S. variety protection under the Act. Under the regulations, labels may contain other information that is not false or misleading. *See* §§ 97.140 to 97.144. Accordingly, AMS is making no changes to the rule as proposed based on this comment.

Comment: One comment from a trade association stated that the regulations are vague regarding the grace period during which breeders can file for PVP after a plant has been commercialized outside the United States. Additionally, the commenter believes there is some ambiguity in the regulations about how the grace period for trees and vines will be applied and suggested that a six-year grace period should be applied to woody plants.

AMS Response: The PVP regulations do not specify the grace period between the dates of commercialization and application for protection under the Act. PVPO references the Act to determine whether a plant can be considered ''new'' and eligible for PVP protection. *See* 7 U.S.C. 2402. A breeder who commercializes a new tree or vine outside the U.S. has up to six years to apply for variety protection under the Act. Once a new tree or vine is commercialized in the U.S., the breeder has only one year to apply for variety protection under the Act. To date, PVPO has not received applications for trees or vines, which are usually propagated asexually, and has not had to consider whether a plant is a tree or vine and subject to the Act's timeframes for those types of plants. Nevertheless, PVPO refers to USDA's Natural Resources Conservation Service definitions[8] for *tree* and *vine* to determine whether a plant is a tree or vine for eligibility purposes. Thus, PVPO considers vines to be twining or climbing woody plants with relatively long stems. PVPO considers trees to be perennial, woody plants with a single stem (trunk), normally greater than 4 to 5 meters (13 to 16 feet) in height. Under certain circumstances, some tree species may develop a multi-stemmed or short growth form (less than 4 meters or 13 feet in height). AMS is making no changes to the rule as proposed based on this comment.

Comment: One comment from a trade association questioned a reference in the

[7] *https://www.ams.usda.gov/services/plant-variety-protection/pvpo-services-and-fees.*

[8] USDA, Natural Resources Conservation Service; *https://plants.usda.gov/growth_habits_def.html*; accessed 9/25/2019.

proposed rule to a change to § 97.104(a) regarding the disposition of seed deposits of abandoned applications.

AMS Response: The commenter is correct in that the proposed change applied to the existing § 97.104(b), which was proposed elsewhere in the proposed rule to be redesignated § 97.104(a). We have clarified that in the preamble discussion, but AMS made no change to the rule as proposed based on this comment.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities. The affected industry falls under the North American Industry Classification System (NAICS) as code 54171—Research and development in the physical, engineering, and life sciences. This classification includes firms that are not plant breeders/plant research; however no detailed industry data was available for the analysis.

Table 1 shows the most recent descriptive data for the industry, obtained from the County Business Pattern 2016 survey. This data set provides information on the number of establishments, number of employees, and total annual payroll.

TABLE 1—NUMBER OF ESTABLISHMENTS, REVENUE AND PAYROLL BY EMPLOYEE COUNT, NAICS CODE 54171, 2016 COUNTY BUSINESS PATTERNS [9]

	Number of establishments	Number of paid employees	Annual payroll ($1,000)
All Establishments	17,292	695,810	$82,865,611

The Small Business Administration (SBA) determines firm size for this industry by number of employees, but on a per firm basis, with small firms defined as having fewer than 1,000 employees and 1,000 or more employees per firm classified as large. Because firms may own more than one establishment, and the County Business Patterns data are compiled on an establishment rather than a firm basis, we must use the Economic Census data to determine the number of small and large firms for the industry.

Table 2 shows the most recent data available on the breakdown between small (<1,000 employees) and large (1,000 or more employees) firms in this industry, according to the SBA's guidance.[10] The data are from the 2002 Economic Census, with monetary values converted to 2016 dollars. More recent Economic Census data is not available at this level of detail for this industry.

TABLE 2—NUMBER OF FIRMS AND ESTABLISHMENTS, REVENUE AND PAYROLL BY EMPLOYEE COUNT, NAICS CODE 54171, 2002 ECONOMIC CENSUS [11]

Size of firm by number of employees	Number of firms	Number of establishments	Number of paid employees	Revenue * ($1,000)	Annual payroll * ($1,000)
Small—Firms with fewer than 1,000 employees	10,200	11,753	273,601	$49,702,793	$24,780,487
Large—Firms with 1,000 employees or more	79	1,380	283,816	30,095,258	27,776,903
All firms	10,279	13,133	557,417	79,798,051	52,557,389

* Adjusted to 2016 values.

The 2002 Economic Census reported that fewer than one percent of firms were considered large (79 of 10,279 firms, or 0.54 percent). The 10,279 firms at that time owned a total of 13,133 establishments, with 1,380 (nearly 11 percent) of these facilities owned by the 79 large firms.

The tables show the extent of growth in the industry over time. The number of establishments has grown from 13,133 in 2002 to 17,292 in 2016 (32 percent, or 2.3 percent per year). Total employment increased from 557,417 workers to 695,810 (25 percent, or 1.8 percent per year), and total annual payroll increased from $52,557,389 to $82,865,611 (58 percent, or 4 percent per year). These figures indicate that the industry has seen small to moderate growth, with a more highly paid work force over time. There do not appear to have been significant changes in the structure of the industry between 2002 and 2016.

In reviewing PVPO's list of customers, AMS found evidence that the size distribution of the firms affected by this rule was consistent with data reported in the 2002 Economic Census. AMS estimates that most PVPO customers would be considered small business entities under the criteria established by SBA (13 CFR 121.201), while fewer than 5% of the plant breeders and plant research and development firms using PVPO services would be considered large businesses with 1,000 or more employees.

The PVP Office administers the PVP Act of 1970, as amended (7 U.S.C. 2321 *et seq.*), and issues certificates of plant variety protection that provide intellectual property rights to developers of new varieties of plants. A certificate is awarded to the owner of a variety after examination indicates that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. PVP is a voluntary service.

This final rule amends the regulations to add application and certification procedures for asexually reproduced

[9] Geography Area Series: County Business Patterns by Employment Size Class, 2016 Business Patterns, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP_2016_00A3&prodType=table.*

[10] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'', Small Business Administration, effective January 1, 2017, *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[11] Professional, Scientific, and Technical Services: Subject Series—Establishment and Firm Size: Employment Size of Firms for the United States: 2002 Economic Census of the United States, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2002_US_54SSSZ5&prodType=table.*

plants that mirror procedures currently in use for sexually reproduced and tuber propagated varieties. This final rule is intended to give breeders of new plant varieties additional tools for protecting new and emerging crops that were not previously available. This benefit will accrue to breeders of all sizes. As well, this final rule simplifies the fee schedule for services provided by the PVPO and reduces maximum chargeable fees for some services from $107.00 per hour to $97.00 per hour. The new fee schedule and rates will streamline the certification process and reduce the cost of maintaining a PVP certificate of plant variety protection and will apply to applicants of all sizes. Finally, the modernization of business processes under the regulations is intended to improve service delivery to PVPO customers of all sizes. There are currently more than 800 users of the plant variety protection service, of whom about 95 file applications in a given year. Some of these users are small business entities under the criteria established by SBA (13 CFR 121.201). With this action, the number of users is expected to increase by roughly 40 firms. AMS expects the industry to submit an additional 50 new applications on a yearly basis.

PVP applicants are subject to an application fee of $5,150 per certificate. This final rule allows firms that withdraw their applications to be reimbursed $3,864 prior to examination, and $768 prior to issuing a PVP certificate. Additional services are available from the PVPO at the request of the applicant. Applicants using these services are subject to fees as listed in the rule schedule (7 CFR 97.175), with the inclusion of the reduction in fees for specified services. It is expected that new applicants will also participate in the germplasm deposit, at a cost of $3,000 per deposit, after the delayed enforcement period, which ends January 6, 2023.

The burden on new entrants is calculated by multiplying the cost of application, $5,150, by the number of expected new applications (50), for an additional cost of $5,150 × 50 = $257,500. The cost to new entrants for the germplasm deposit after January 6, 2023, is $3,000 × 50 = $150,000. In total this represents an additional cost to industry for this proposed rule of $407,500. The estimate is an upper boundary made without including the cost savings that result from deposit waivers, the reduced hourly fee for additional services, or the reimbursement for withdrawn applications, as these cost reductions are expected to be needed infrequently.

Due to the limited cost of the final rule expanding a voluntary program, AMS has determined that this action will not have a significant economic impact on a substantial number of these small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS submitted the information collection requirements for this program as a new collection to OMB for approval. AMS developed a new PVP application form for asexually reproduced plant varieties. AMS estimated a total annual reporting burden of 553 hours associated with the new form, based on an estimated 50 respondents (the number of additional applications) making approximately 12.82 responses averaging 0.86 hours per response.

On May 14, 2019, AMS published a notice concerning the request for OMB approval of the new form and solicited comments on the new information collection and estimated burden (84 FR 21314). The notice provided a 60-day comment period to allow interested parties to submit comments on the approval request. AMS received two comments. Both included comments on certain aspects of the concurrent proposed rule as well as comments on the information collection. AMS addressed comments on the proposed rule in the Comments section of this document above, and addresses comments on the information collection here.

Comment: One comment from a university technology and licensing program recommended that PVPO employ online technical questionnaires to collect crop-specific information. According to the commenter, UPOV uses such questionnaires, which the commenter believes are more practical and less burdensome to file and would harmonize the ST–470 series of forms with similar DUS forms used in other countries.

AMS Response: PVPO incorporated the UPOV Test Guidelines into its forms related to asexually reproduced crops in order to harmonize with the UPOV system. The PVPO still requires the use of Form ST–470 and related exhibits, since the U.S. PVP system is breeder-based. Under PVP, the breeder performs the two required grow-out trials and provides the characteristics data from those trials on the crop-specific Exhibit C form, which incorporates the UPOV Table of Characteristics. Form ST–470 and its exhibits provide PVPO with information needed by the examination staff in the absence of PVPO-controlled grow-out trials. Accordingly, AMS made no changes to the approved forms based on this comment.

Comment: One comment from an association of plant breeders, producers, and traders supported replacing Form ST–470–C (Exhibit C—Objective Description of Variety) with an approved DUS report from a UPOV member state. The commenter also supported merging Forms ST–470–A, –B, and –E (Exhibits A, B, and E) into one form for the PVPO information collection, although they did not explain why. Finally, the commenter asserted that the information collected on Form ST–470–A (Exhibit A—Origin and Breeding History) is not necessary for all plant species because plant pedigree information is irrelevant to the variety description. The commenter believes requiring such information is administratively burdensome and breaches business confidentiality.

AMS Response: PVPO will accept DUS reports from other UPOV countries on a case-by-case basis for all asexually reproduced varieties and several sexually propagated varieties. The information applicants provide on Form ST–470–A (Exhibit A—Origin and Breeding History) demonstrates to PVPO examiners that a variety has been further developed beyond just discovery of a new variety. AMS believes the information requested does not differ in principle from the questions asked on the UPOV Technical Questionnaire regarding breeding type and history. AMS believes the information collected on Form ST–470 and its exhibits allows PVPO to complete a full examination of a new variety for distinctness, uniformity, and stability. Accordingly, AMS made no changes to the new information collection in response to the comments.

OMB approved the new information collection and the new application form, which will be merged with PVPO's existing information package, OMB No. 0581–0055.

This final rule revises the PVP regulations to allow PVPO to issue certificates of protection for asexually reproduced plant varieties. This final rule also simplifies the fee schedule for applicants and will lower the fees for some services. Finally, this rule modernizes the PVPO regulations to reflect current industry and government business operations. Reports and forms used in PVPO operations are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

E-Government Act

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

Executive Orders 12866 and 13771

This final rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). 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 Costs''' (February 2, 2017).

Executive Order 13175

This final rule has been reviewed under 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: (1) Policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) 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.

AMS has assessed the impact of this rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about changes to the regulations were shared during one such quarterly call, and tribal leaders were informed about the revisions to the regulations and invited to ask questions and share concerns. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the PVPO regulations.

Congressional Review Act

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988—Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 63 of the Act, when an application for plant variety protection has been refused by the PVPO, the applicant may appeal to the Secretary. The Secretary must seek the advice of the Plant Variety Protection Board on all appeals before deciding an appeal. The Act provides that an applicant can appeal the Secretary's decision in the U.S. Court of Appeals for the Federal Circuit or institute a civil action in the U.S. District Court for the District of Columbia, provided that such action is taken within 60 days of the Secretary's decision, or such further time as the Secretary allows.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For the reasons set forth in the preamble, USDA amends 7 CFR part 97 as follows:

PART 97—PLANT VARIETY AND PROTECTION

■ 1. The authority citation for part 97 continues to read as follows:

Authority: Plant Variety Protection Act, as amended, 7 U.S.C. 2321 *et seq.*

■ 2. Revise § 97.1 to read as follows:

§ 97.1 General.

Certificates of protection are issued by the Plant Variety Protection office for new, distinct, uniform, and stable varieties of sexually reproduced, tuber propagated, or asexually reproduced plants. Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing it, importing or exporting it, conditioning it, stocking it, or using it in producing a hybrid or different variety from it, as provided by the Act.

■ 3. Amend § 97.2 by removing the definition for ''Official Journal'' and revising the definition for ''Sale for other than seed purposes''.

The revision reads as follows:

§ 97.2 Meaning of words.

* * * * *

Sale for other than seed or propagating purposes. The transfer of title to and possession of the seed or propagating material by the owner to a grower or other person, for reproduction for the owner, for testing, or for experimental use, and not for commercial sale of the seed, reproduced seed, propagating material, or reproduced propagating material for planting purposes.

■ 4. Amend § 97.5 by revising paragraph (c) to read as follows:

§ 97.5 General requirements.

* * * * *

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office by sending an email request to *PVPOmail@usda.gov* or downloading forms from the PVPO website (*https://www.ams.usda.gov/PVPO*).

* * * * *

■ 5. Amend § 97.6 by revising paragraphs (c) and (d)(3) and adding paragraph (d)(4) to read as follows:

§ 97.6 Application for certificate.

* * * * *

(c) The fees for filing an application, examination, and certificate issuance shall be submitted with the application in accordance with §§ 97.175 through 97.178.

(d) * * *

(3) With the application for a hybrid from self-incompatible parents, a declaration that a plot of vegetative material for each parent will be established in a public depository approved by the Commissioner and will be maintained for the duration of the certificate, or

(4) Except as provided in § 97.7(d)(3), with the application for an asexually propagated variety, a declaration that a deposit of propagating material in a public depository approved by the Commissioner will be made and maintained for the duration of the certificate.

■ 6. Amend § 97.7 by revising the first sentence of paragraph (b) introductory text and paragraphs (c)(5) and (d) to read as follows:

§ 97.7 Deposit of Voucher Specimen.

* * * * *

(b) *Need to make a deposit.* Except as provided in (d)(3), applications for plant variety protection require deposit of a voucher specimen of the variety. * * *

* * * * *

(c) * * *

(5) Once a depository is recognized to be suitable by the Commissioner or has defaulted or discontinued its performance under this section, notice thereof will be published on the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*).

(d) *Time of making an original deposit.* An original deposit of materials for seed-reproduced plants shall be made within three months of the filing date of the application or prior to issuance of the certificate, whichever occurs first. An original deposit of materials for tuber-propagated plants or asexually reproduced plants shall be made within three months from the notice of certificate issuance date. A waiver from these time requirements may be granted for good cause, such as delays in obtaining a phytosanitary certificate for the importation of voucher sample materials. A delay waiver may also be granted if the repository determines that it is technically infeasible to deposit propagating materials for certain asexually reproduced plants.

(1) When the original deposit is made, the applicant must promptly submit a statement from a person in a position to corroborate the fact, stating that the voucher specimen material which is deposited is the variety specifically identified in the application as filed. Such statement must be filed in the application and must contain the identifying information listed in paragraph (b) of this section and:

(i) The name and address of the depository;

(ii) The date of deposit;

(iii) The accession number given by the depository; and

(iv) A statement that the deposit is capable of reproduction.

(2) The following conditions apply to delay waivers granted due to technical difficulties with depositing propagating material for asexually reproduced plants:

(i) The applicant is required to make a declaration that the propagating material will be maintained at a specific physical location, subject to Plant Variety Protection Office inspection when requested; and

(ii) The applicant is required to make a declaration that propagating material will be provided within three months of a request by the Plant Variety Protection Office. Failure to provide propagating material as requested shall result in the certificate being regarded as abandoned.

(iii) The delay waiver is effective until the Plant Variety Protection Office notifies the applicant that the technical infeasibility has been resolved. Upon that notification, the applicant must provide a deposit within three months. Failure to provide a deposit shall result in the certificate being regarded as abandoned.

(3) Original deposits of propagating material for asexually reproduced varieties are not required for applications submitted between January 6, 2020, and January 6, 2023; provided: *That* the applicant is required to make the declarations described in paragraphs (d)(2)(i) and (ii) of this section.

* * * * *

■ 7. Amend § 97.9 by revising paragraphs (b) and (c) to read as follows:

§ 97.9 Drawings and photographs.

* * * * *

(b) Drawings or photographs shall be in color when color is a distinguishing characteristic of the variety, and the color shall be described by use of Nickerson's color fan, the Munsell Book of Color, the Royal Horticultural Society Colour Chart, or other recognized color chart.

(c) Drawings shall be sent flat, or may be sent in a suitable mailing tube or by email in high resolution format, in accordance with instructions furnished by the Commissioner.

* * * * *

■ 8. Amend § 97.12 by revising paragraph (a) to read as follows:

§ 97.12 Number and filing date of an application.

(a) Applications shall be numbered and dated in sequence in the order received by the Office. Applicants will be informed in writing, by mail or email, as soon as practicable of the number and effective filing date of the application.

* * * * *

■ 9. Amend § 97.14 by revising paragraph (d) to read as follows:

§ 97.14 Joint applicants.

* * * * *

(d) If a joint owner refuses to join in an application or cannot be found after diligent effort, the remaining owner may file an application on behalf of him or herself and the missing owner. Such application shall be accompanied by a written explanation and shall state the last known address of the missing owner. Notice of the filing of the application shall be forwarded by the Office to the missing owner at the last known address. If such notice is returned to the Office undelivered, or if the address of the missing owner is unknown, notice of the filing of the application shall be published once on the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*). Prior to the issuance of the certificate, a missing owner may join in an application by filing a written explanation. A certificate obtained by fewer than all of the joint owners under this paragraph conveys the same rights and privileges to said owners as though all of the original owners had joined in an application.

■ 10. Amend § 97.19 by revising the introductory text and paragraph (c) to read as follows:

§ 97.19 Publication of pending applications.

Information relating to pending applications shall be published periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*) shall show:

* * * * *

(c) The name of the crop; and

* * * * *

■ 11. Amend § 97.20 by revising paragraph (a) to read as follows:

§ 97.20 Abandonment for failure to respond within the time limit.

(a) Except as otherwise provided in § 97.104, if an applicant fails to advance actively his or her application within 30 days after the date when the last request for action was mailed to the applicant by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. The filing and examination fees in such cases will not be refunded.

* * * * *

■ 12. Amend § 97.23 by revising paragraph (c) and removing paragraph (d).

The revision reads as follows:

§ 97.23 Voluntary withdrawal and abandonment of an application.

* * * * *

(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of new filing and examination fees.

■ 13. Revise § 97.101 to read as follows:

§ 97.101 Notice of allowance.

If, on examination, PVPO determines that the applicant is entitled to a certificate, a notice of allowance shall be sent to the applicant or his or her attorney or agent of record, if any, requesting verification of the variety name and of the name of the owner. The notice will also provide an opportunity for withdrawal of the application before

certificate issuance. The applicant must respond within 30 days from the date of the notice of allowance. Thereafter, a fee for delayed response shall be charged as specified in § 97.175(f).

■ 14. Amend § 97.103 by revising paragraph (a) to read as follows:

§ 97.103 Issuance of a certificate.

(a) After the notice of allowance has been issued and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed, no waiver of such rights shall be permitted by amendment of the certificate.

* * * * *

■ 15. Revise § 97.104 to read as follows:

§ 97.104 Application or certificate abandoned.

(a) Upon request by the Office, the owner shall replenish the seed or propagating material of the variety and shall pay the handling fee for replenishment. Samples of seed or propagating material related to abandoned applications or certificates will be retained or destroyed by the depository. Failure to replenish seed or propagating material within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published on the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*), indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name as ''certified seed only,'' that such restriction no longer applies.

(b) If the seed or propagating material is submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred. For good cause, the Commissioner may extend for a reasonable time the period for submitting seed or propagating material before declaring the certificate abandoned.

(c) A certificate may be voluntarily abandoned by the applicant or his or her attorney or agent of record or the assignee of record by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice on the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*) that the variety has become open for use by the public, and if previously specified to be sold by variety name as ''certified seed only,'' that such restriction no longer applies.

■ 16. Revise § 97.141 to read as follows:

§ 97.141 After issuance.

Upon issuance of a certificate, the owner of the variety, or his or her designee, may label the variety, propagating material of the variety, or containers of the seed of the variety or plants produced from such seed or propagating material substantially as follows: ''Unauthorized Propagation Prohibited—(Unauthorized Seed or Propagating Material Multiplication Prohibited)—U.S. Protected Variety.'' Where applicable, ''PVPA 1994'' or ''PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited'' may be added to the notice.

■ 17. Revise § 97.142 to read as follows:

§ 97.142 For testing or increase.

An owner who contemplates filing an application and releases for testing or increase seed of the variety or propagating material or reproducible plant material of the variety may label such plant material or containers of the seed or plant material substantially as follows: ''Unauthorized Propagation Prohibited—For Testing (or Increase) Only.''

■ 18. Revise § 97.175 to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified in paragraphs (a) through (f) of this section:

(a) Application:

(1) Initial fee for filing, examination, and certificate issuance—$5,150

(2) Submission of new application data prior to issuance of certificate—$432

(3) Granting extensions for responding to data requests—$89

(4) Refunds pursuant to § 97.178 may be issued for portions of the initial application fee as follows: examination—$3,864, and certificate issuance—$768.

(b) Reconsideration of application—$589

(c) Revival of an abandoned application—$518

(d) Appeals:

(1) Filing a petition for protest to Commissioner—$4,118

(2) Appeal to Secretary (refundable if appeal overturns protest to Commissioner)—$4,942

(e) Field inspections or other services requiring travel by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, salary, and administrative costs), in accordance with standardized government travel regulations.

(f) Any other service not covered in this section, including, but not limited to, reproduction of records, authentication, correction, or reissuance of a certificate, recordation or revision of assignment, and late fees will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $97 per employee hour. Charges will also be made for materials, space, and administrative costs.

■ 19. Revise § 97. 177 to read as follows:

§ 97.177 Method of payment.

Payments can be submitted through the electronic Plant Variety Protection system or pay.gov. Checks or money orders shall be made payable to the Treasurer of the United States. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the prescribed fee. Money sent by mail to the Office shall be sent at the sender's risk.

■ 20. Revise § 97.178 to read as follows:

§ 97.178 Refunds.

Money paid by mistake or excess payments shall be refunded, but a mere change of plans after the payment of money, as when a party decides to withdraw an application or to withdraw an appeal, shall not entitle a party to a refund. However, the examination fee shall be refunded if an application is voluntarily withdrawn or abandoned pursuant to § 97.23(a) before the examination has begun. The certificate issuance fee shall be refunded if an application is voluntarily withdrawn or abandoned after an examination has been completed and before a certificate has been issued. Amounts of $1 or less shall not be refunded unless specifically demanded.

■ 21. Amend § 97.403 by revising paragraph (d) to read as follows:

§ 97.403 Manner of service.

* * * * *

(d) Whenever it shall be found by the Commissioner or Secretary that none of the above modes of serving the paper is practicable, service may be by notice, published once on the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*).

■ 22. Revise § 97.500 to read as follows:

§ 97.500 Appeal to U.S. Courts.

Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Courts of Appeals for the Federal Circuit or institute a civil

action in the U.S. District Court for the District of Columbia, as set forth in the Act. In such cases, the appellant or plaintiff shall give notice to the Secretary, state the reasons for appeal or civil action, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of, and at the expense of the appellant or plaintiff.

■ 23. Amend § 97.600 by revising the heading to read as follows:

§ 97.600 Administrative provisions.

* * * * *

■ 24. Revise § 97.800 to read as follows:

§ 97.800 Publication of public variety descriptions.

Voluntary submissions of varietal descriptions of ''public varieties'' on forms obtainable from the Office will be accepted for publication on the Plant Variety Protection Office website (*https://www.ams.usda.gov/PVPO*). Such publication shall not constitute recognition that the variety is, in fact, distinct, uniform, and stable.

Dated: December 18, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–27636 Filed 1–3–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0603; Product Identifier 2019–NM–087–AD; Amendment 39–21013; AD 2019–25–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–300ER and 777F series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage stringers, stringer splices, and skin splice straps are subject to widespread fatigue damage (WFD). This AD requires repetitive detailed inspections of certain stringer splices and skin splice straps for any cracks, repetitive high frequency eddy current (HFEC) inspections of certain stringers and stringer splices for any cracks, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 10, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0603.

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–2019–0603; 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: Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–300ER and 777F series airplanes. The NPRM published in the **Federal Register** on August 8, 2019 (84 FR 38889). The NPRM was prompted by an evaluation by the DAH indicating that the fuselage stringers, stringer splices, and skin splice straps are subject to WFD. The NPRM proposed to require repetitive detailed inspections of certain stringer splices and skin splice straps for any cracks, repetitive HFEC inspections of certain stringers and stringer splices for any cracks, and applicable on-condition actions.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

United Airlines concurred with the NPRM.

Request To Use an Approved Document for the Inspections

FedEx requested that either the service information or the proposed AD be revised to include a repair approved via FAA Form 8110–3 as a repair that would not require a repeat inspection of the affected inspection zone. FedEx noted that Note (a) 2. in Tables 1 through 12 in paragraph 3., Compliance, of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, states that ''It is not required to do repeat inspections in areas where a repair covers the affected inspection zone provided . . . the installed repair was approved by the Boeing Organizational Designation Authorization via a FAA Form 8100–9.'' FedEx did not provide further justification for this request.

The FAA does not agree with the request. Note (a) 2. of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, addresses repairs that are designed as corrective actions to address the unsafe condition, which include a follow-on inspection program. The FAA allows FAA Form 8100–9 for approved repairs that meet the specified criteria, because it is used by the Boeing Organization Designation Authorization (ODA). The ODA staff are familiar with the unsafe condition addressed by this proposed AD and are able to develop a repair and repetitive inspection program that adequately addresses the unsafe condition. FAA Form 8110–3 is for use by a consultant/company designated engineering representative (DER), who may not have the same data or knowledge of the unsafe condition as the Boeing ODA. For this reason, the FAA does not allow approvals granted via an FAA Form 8110–3 under the provisions of note (a) 2. of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019. However, operators may utilize DERs with the appropriate authorizations to repair their airplanes and request an

alternative method of compliance (AMOC) for the repair in accordance with paragraph (i) of this AD. The AD has not been changed in this regard.

Request To Add Service Information Exception

FedEx requested an additional exception in paragraph (h) of the proposed AD to be included to state that the notes in paragraph 5.A, General Information, of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, are not mandated by the proposed AD. FedEx pointed out that the notes are only general information and should not be subject to the requirements of the proposed AD. FedEx went on to argue that other operators and maintenance, repair, and overhaul (MRO) services have acceptable maintenance practices that are approved in accordance with 14 CFR 121 and 14 CFR 145. FedEx suggested that, if a note is to be mandated by the proposed AD, then the note should be listed within paragraph (g) of the proposed AD.

The FAA agrees to clarify. Accomplishing the actions specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, is required in its entirety for compliance with the AD. The notes in paragraph 5.A, General Information, of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, are provisions to define or explain the different aspects of the requirements and service information, including inspection types, dimensions and tolerances, and other information. These notes are relieving. If these notes were not included in Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, operators would have to seek AMOCs for items like approved fastener substitutions and tolerances for different dimensions or torque values. By including the notes, the FAA does not anticipate operators needing AMOCs for items covered by the notes. Operators or MRO services may apply for an AMOC in accordance with paragraph (i) of this AD if they are concerned about a specific note or have an alternative maintenance practice they would like to use. The AD has not been changed in this regard.

Request To Include Inspection for Existing Repairs

FedEx requested that either the service information or the proposed AD be revised to include an inspection for existing repairs. FedEx reasoned that other related ADs include inspections or corrective actions for existing repairs.

The FAA does not agree with the request. In general, service information and ADs only include instructions to inspect for existing repairs when it has been determined that there are numerous existing repairs in the affected area that could impede an operator's ability to do the required actions in a new AD. In this case, the FAA has determined that there are few, if any, such existing repairs, so an inspection for existing repairs is not necessary. Operators with an existing repair in the affected area can apply for an AMOC in accordance with paragraph (i) of this AD. The AD has not been changed in this regard.

Request To Revise a Certain Note to This AD

FedEx requested that Note 1 to paragraph (g) of the proposed AD be removed or revised to refer back to Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, rather than Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019. FedEx argued that including the note in the regulatory text of the proposed AD, means that Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, is also mandated to accomplish the requirements of the proposed AD. FedEx contended that it does not believe both a service bulletin and a requirements bulletin are required to satisfy the requirements of an AD. FedEx went on to assert that in past ADs, only one of either type of service information was necessary. FedEx suggested that, if the FAA must reference Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, for accomplishing the proposed AD, then the proposed AD should only require Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019.

The FAA agrees to clarify. Paragraph (g) of this AD requires operators to comply with only the actions identified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019. Note 1 to paragraph (g) of this AD does not mandate Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019. Instead, Note 1 to paragraph (g) of this AD notifies operators that Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, provides additional guidance that may be helpful in complying with the requirements of this AD. This language is consistent with the language used in other ADs that refer to Boeing Requirement Bulletins. The AD has not been changed in this regard.

Request To Remove Open and Close Access Steps

FedEx requested that the open and close access steps from Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, be removed from the AD. FedEx noted that Tables 1 through 12 in paragraph 5.B.1., Requirements, of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, include actions for open and close access. FedEx contended that, because these actions are included within Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, they are actions that are required by the proposed AD. FedEx pointed to Note 1 in paragraph 5.A, General Information, of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, which explains ''enhanced required for compliance'' documents, as further supporting their position that actions for open and close access are required to be accomplished. FedEx reasoned that the justification for using requirements bulletins was to eliminate the need for AMOCs for actions such as access and general maintenance practices. FedEx suggested that, should the FAA not remove the open and close access requirements from Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, then Boeing should return to writing only service bulletins with marked ''RC'' steps.

The FAA agrees to clarify. The open and close access steps are not identified in the ''Action'' column in the tables in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, and therefore are not required by this AD. The open and close access steps in the ''Refer to'' column in the tables in the Accomplishment Instructions of the Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, are only there to specify one method for open and close access if needed. Operators may use accepted methods for open and close access in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC. The AD has not been changed in this regard.

Request To Address Service Information Error

FedEx pointed out that Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, references the incorrect Boeing aircraft maintenance manual (AMM) chapter. FedEx stated that the open and close access steps of Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, should reference

Boeing 777 AMM 25–80–00 instead of Boeing 777 AMM 25–59–02, for removing main deck cargo compartment insulation blankets. FedEx added that it assumes the open and close access steps are required for compliance with the proposed AD, so this change would avoid the need for FedEx to obtain an AMOC.

The FAA agrees to clarify. The FAA concurs that the AMM reference in Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, is incorrect and that one source of information for accomplishing this task is Boeing 777 AMM 25–80–00. However, a revision to the service information is not necessary in order to comply with this AD. As stated previously, the open and close access steps referenced in Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, are not required for compliance because they are not identified in the Action column of the tables of the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019. The AD has not been changed in this regard.

Request To Clarify the Location of the Unsafe Condition

Boeing pointed out that the description of the location of the unsafe condition is incorrect in the first sentence of the fifth paragraph of the Discussion section of the NPRM. Boeing explained that the unsafe condition was found beneath certain stringer splices and not beneath certain circumferential splices. Boeing requested that the sentence be changed to read: ''The FAA has received a report indicating that aluminum chips and conical burr foreign object debris (FOD), were found on in-production model 777–300ER and 777F airplanes in the interfaces beneath stringer splices at station (STA) 825+210, STA 655, STA 1434+189, and STA 1832.''

The FAA agrees that the description in the NPRM is inaccurate. Since that section of the preamble does not reappear in the final rule, no change to the final rule is necessary.

Request To Correct a Typographical Error

Boeing requested that the FAA correct a typographical error in the Costs of Compliance section of the NPRM. The NPRM stated that ''The FAA has have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.'' Boeing noted that the word ''have'' should be removed from the sentence.

The FAA agrees with the commenter that an error was made in the Costs of Compliance section of the NPRM, and the error has been corrected accordingly.

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 with the change described previously and 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.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019. The service information describes procedures for repetitive detailed inspections of certain stringer splices and skin splice straps for any cracks, repetitive HFEC inspections of certain stringers and stringer splices for any 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.

Costs of Compliance

The FAA estimates that this AD affects 12 airplanes of U.S. registry. The agency estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed and HFEC Inspections.	Up to 79 work-hours × $85 per hour = Up to $6,715 per inspection cycle.	$0	Up to $6,715 per inspection cycle.	Up to $80,580 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 AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the agency has included all known costs in its cost estimate.

Authority for This Rulemaking

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

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

This 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):

2019–25–14 The Boeing Company: Amendment 39–21013; Docket No. FAA–2019–0603; Product Identifier 2019–NM–087–AD.

(a) Effective Date

This AD is effective February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–300ER and 777F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage stringers, stringer splices, and skin splice straps are subject to widespread fatigue damage (WFD). The FAA is issuing this AD to address undetected fatigue cracks, which could adversely affect the 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 777–53A0091 RB, dated April 8, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–53A0091, dated April 8, 2019, which is referred to in Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, uses the phrase ''the original issue date of Requirements Bulletin 777–53A0091 RB'' or ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019, uses the phrase ''the original issue date of this service bulletin'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 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) 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

For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov*.

(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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 777–53A0091 RB, dated April 8, 2019.

(ii) [Reserved]

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

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on December 17, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28465 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0709; Product Identifier 2019–NM–127–AD; Amendment 39–21008; AD 2019–25–10]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by reports of fuselage bottom

skin exfoliation corrosion, fuselage skin bulging and cracking, and missing fastener heads. This AD requires a detailed inspection of the fuselage bottom skin for corrosion; skin cracks or bulges; and missing, loose, or broken fasteners; and, depending on the findings, accomplishment of applicable repairs; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 10, 2020.

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–2019–0709.

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–2019–0709; 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: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0162, dated July 10, 2019 (''EASA AD 2019–0162'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI'') to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes.

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on October 4, 2019 (84 FR 53073). The NPRM was prompted by reports of fuselage bottom skin exfoliation corrosion, fuselage skin bulging and cracking, and missing fastener heads. The NPRM proposed to require a detailed inspection of the fuselage bottom skin for corrosion; skin cracks or bulges; and missing, loose or broken fasteners; and, depending on the findings, accomplishment of applicable repairs.

We are issuing this AD to address fuselage bottom skin exfoliation corrosion, fuselage skin bulging and cracking, and missing fastener heads which, if not corrected, could affect the structural integrity of the fuselage, possibly resulting in a decompression event. See the MCAI for additional background information.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data 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 2019–0162 describes procedures for a one-time detailed inspection of the fuselage bottom skin for corrosion; skin cracks or bulges; and missing, loose, or broken fasteners; and, depending on the findings, accomplishment of applicable repairs. EASA AD 2019–0162 also describes procedures for reporting all of the inspection results (both positive and negative). 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 4 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$340

*Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $340, or $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	(*)	$170

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

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to 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) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

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):

2019–25–10 Fokker Services B.V.: Amendment 39–21008; Docket No. FAA–2019–0709; Product Identifier 2019–NM–127–AD.

(a) Effective Date

This AD is effective February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports of fuselage bottom skin exfoliation corrosion, fuselage skin bulging and cracking, and missing fastener heads. The FAA is issuing this AD to address this condition which, if not corrected, could affect the structural integrity of the fuselage, possibly resulting in a decompression event.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with European Union Aviation Safety Agency (EASA) AD 2019–0162, dated July 10, 2019 (''EASA AD 2019–0162'').

(h) Exceptions to EASA AD 2019–0162

(1) Where EASA AD 2019–0162 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0162 does not apply to this AD.

(3) Paragraph (3) of EASA AD 2019–0162 specifies to report inspection results to Fokker within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

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

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

(i) 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 Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD; the nature and extent of confidentiality to be provided, if any. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov*.

(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 2019–0162, dated July 10, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0162, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; internet *https://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–2019–0709.

(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 December 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28468 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0256; Product Identifier 2019–NM–027–AD; Amendment 39–19786; AD 2019–22–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a report that during Automatic Flight Control System (AFCS) ALTS CAP or (V) ALTS CAP mode, the flight guidance/autopilot does not account for engine failure while capturing an altitude. This AD requires revising the existing airplane flight manual (AFM) to include a limitation and an abnormal operating procedure for the AFCS. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 10, 2020.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0256.

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–2019–0256; 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: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–32, dated December 10, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet

Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the airplanes identified in the MCAI. The NPRM published in the **Federal Register** on May 14, 2019 (84 FR 21276). The NPRM was prompted by a report that during AFCS ALTS CAP or (V) ALTS CAP mode the flight guidance/autopilot does not account for engine failure while capturing an altitude. The NPRM proposed to require revising the existing AFM to include a limitation and abnormal operating procedure for the AFCS.

The FAA is issuing this AD to address an engine failure, if it occurs during or before a climb while in ALTS CAP or (V) ALTS CAP mode, which may cause the airspeed to drop significantly below the safe operating speed, possibly resulting in reduced control 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 following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The Air Line Pilots Association, International (ALPA) indicated its support for the NPRM. Endeavor Air stated that it has no objection to adding a requirement to revise the existing AFM to include the information in Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS,'' of the applicable Bombardier AFM.

Request To Remove a Proposed Requirement

Endeavor Air stated that it disagreed with the proposed requirement to revise the existing AFM to include the information in Subject C, ''Engine Failure in Climb During ALTS CAP,'' or ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' as applicable, of the applicable Bombardier AFM. The commenter stated that the increased pilot workload of having to accomplish two independent quick reference handbook procedures following an engine failure would reduce the safety margins. The commenter explained that when an engine failure occurs during (V) ALTS CAP mode, the resulting speed decay is minimal given a worst-case scenario of climbing at a slow airspeed with a high rate of climb, which could result in the greatest amount of time in (V) ALTS CAP mode. The commenter further explained that by the time the pilot flying the airplane called for the procedure and disconnected the autopilot, the (V) ALTS CAP phase would be over and the airplane would be in level flight. The commenter mentioned that the decrease in automation and increase in pilot workload could reduce the pilot's situational awareness of the engine failure malfunction and the state of the airplane.

The FAA infers that the commenter is requesting that the requirement to revise the existing AFM to include the information specified in Subject C, ''Engine Failure in Climb During ALTS CAP,'' or ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' of the applicable Bombardier AFM be removed from this AD. The FAA disagrees with the commenter's request. In ALTS CAP mode the speed control is on thrust; therefore, the loss of a single engine would result in airspeed decay if the flight director guidance was followed by the autopilot or flight director commands.

Furthermore, for the Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes, a simulation showed that at certain weights, V_{MCA} (the minimum control speed in the air) could be reached before the stall warning occurred, with the potential for loss of control of the airplane if the flight director commands were followed without any pilot action to otherwise control speed with pitch attitude. In some worst-case conditions, to ensure a safe speed, the automation (autopilot) must be disconnected.

In addition, the purpose of the AFM abnormal procedure is to ensure flightcrew awareness of the requirement to disconnect the autopilot and control the airspeed with pitch attitude. In regard to increased pilot workload, the FAA considered that a pilot of at least average skill would, in most cases, intuitively disconnect the autopilot and control speed manually in the event of a large deceleration while in ALTS CAP mode. The intent of the AFM abnormal procedure is to provide instructions for the steps required to maintain speed control, as opposed to a checklist in a quick reference handbook to address such a situation if encountered. Furthermore, in some conditions, the duration of ALTS CAP mode may be short enough that the airspeed decay may not be large, but the AFM must address the worst-case conditions. The FAA has not revised this AD in regard to this issue.

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. 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 Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for revising the existing AFM by including a limitation that specifies a warning for the AFCS and an abnormal operating procedure if an engine failure occurs during or before a climb while in ALTS CAP mode or if an engine failure occurs during or before a climb while in (V) ALTS CAP mode. These documents are distinct since they apply to different airplane models.

- Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS;'' and Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES;'' of the Bombardier CRJ Series Regional Jet Model CL–600–2B19 AFM, Volume 1, CSP A–012, Revision 70, dated July 13, 2018.
- Subject 2,'' Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS;'' and Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES;'' of the Bombardier CRJ Series Regional Jet CL–600–2C10, AFM CSP B–012, Revision 24, dated May 11, 2018.
- Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–

08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS;'' and Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES;'' of the Bombardier CRJ Series Regional Jet Model CL–600–2D24 and CL–600–2D15 AFM, Volume 1, CSP C–012, Revision 19A, dated August 17, 2018.

• Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS;'' and Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES;'' of the Bombardier CRJ Series Regional Jet Model CL–600–2E25 AFM CSP D–012, Revision 20, dated September 28, 2018.

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.

Costs of Compliance

The FAA estimates that this AD affects 985 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$83,725

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):

2019–22–07 Bombardier, Inc.: Amendment 39–19786; Docket No. FAA–2019–0256; Product Identifier 2019–NM–027–AD.

(a) Effective Date

This AD is effective February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(3) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(4) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Reason

This AD was prompted by a report that during Automatic Flight Control System (AFCS) ALTS CAP or (V) ALTS CAP mode the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is issuing this AD to address an engine failure, if it occurs during or before a climb while in ALTS CAP or (V) ALTS CAP mode, which may cause the airspeed to drop significantly below the safe operating speed, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the existing AFM to include the information in Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS;'' and Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' or Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES;'' as applicable; of the applicable AFM identified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) - *AFM Revision*

Bombardier Airplane Model	AFM Number	CRJ Series Regional Jet AFM Revision
CL-600-2B19	CSP A-012, Volume 1	Revision 70, dated July 13, 2018.
CL-600-2C10	CSP B-012	Revision 24, dated May 11, 2018.
CL-600-2D15 CL-600-2D24	CSP C-012, Volume 1	Revision 19A, dated August 17, 2018.
CL-600-2E25	CSP D-012	Revision 20, dated September 28, 2018.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable AFM specified in figure 2 to paragraph (h) of this AD.

Figure 2 to paragraph (h) - *Credit for Previous AFM Revision*

Bombardier Airplane Model	AFM Number	CRJ Series Regional Jet AFM Revision
CL-600-2B19	CSP A-012	Revision 68, dated August 4, 2017; or Revision 69, dated January 5, 2018.
CL-600-2C10	CSP B-012	Revision 22, dated September 15, 2017; Revision 22A, dated January 3, 2018; Revision 23, dated March 2, 2018; or Revision 23A, dated April 30, 2018.
CL-600-2D15 CL-600-2D24	CSP C-012	Revision 17, dated October 13, 2017; Revision 17A, dated November 15, 2017; Revision 17B, dated January 3, 2018; Revision 18, dated March 29, 2018; Revision 18A, dated April 30, 2018; or Revision 19, dated June 15, 2018.
CL-600-2E25	CSP D-012	Revision 17, dated June 16, 2017; Revision 18, dated November 10, 2017; Revision 18A, dated January 3, 2018; or Revision 19, dated April 27, 2018.

BILLING CODE 4910–13–C

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–32, dated December 10, 2018, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0256.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(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) Bombardier CRJ Series Regional Jet Model CL–600–2B19 Airplane Flight Manual (AFM), Volume 1, CSP A–012, Revision 70, dated July 13, 2018.

(A) Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS.''

(B) Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES.''

(ii) Bombardier CRJ Series Regional Jet Model CL–600–2C10 AFM, CSP B–012, Revision 24, dated May 11, 2018.

(A) Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS.''

(B) Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES.''

(iii) Bombardier CRJ Series Regional Jet Model CL–600–2D24 and Model CL–600–2D15 AFM, Volume 1, CSP C–012, Revision 19A, dated August 17, 2018.

(A) Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS.''

(B) Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES.''

(iv) Bombardier CRJ Series Regional Jet Model CL–600–2E25 AFM, CSP D–012, Revision 20, dated September 28, 2018.

(A) Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS.''

(B) Subject 1.C, ''Engine Failure in Climb During ALTS CAP,'' and Subject 1.C, ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES.''

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on November 18, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28463 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0710; Product Identifier 2019–NM–060–AD; Amendment 39–21009; AD 2019–25–11]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited) 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 Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. This AD was prompted by reports of cracks on the wing lower skin under the drag angle at a certain wing station (WS). This AD requires a one-time inspection of the wing lower skin under the drag angle at a certain WS to determine if a certain repair or modification has been accomplished; repetitive visual inspections of certain fuselage structures; repetitive eddy current inspections of the front spar along a certain WS reference line, the drag angle, and all fastener holes; repetitive structural gap checks of a certain surface; and corrective actions if necessary. This AD also requires replacing certain rivets with certain fasteners, and corrective actions if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 10, 2020.

ADDRESSES: For service information identified in this final rule, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email *acs-technical.publications@vikingair.com*; internet *https://www.vikingair.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0710.

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–2019–0710; 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: Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–07, dated March 4, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0710.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. The NPRM published in the **Federal Register** on October 4, 2019 (84 FR 53076). The NPRM was prompted by reports of cracks on the wing lower skin under the drag angle at a certain WS. The NPRM proposed to require a one-time inspection of the wing lower skin under the drag angle at a certain WS to determine if a certain repair or modification has been accomplished; repetitive visual inspections of certain fuselage structures; repetitive eddy current inspections of the front spar along a certain WS reference line, the drag angle, and all fastener holes; repetitive structural gap checks of a certain surface; and corrective actions if necessary. The NPRM also proposed to require replacing certain rivets with certain fasteners, and corrective actions if necessary. The FAA is issuing this AD to address this condition, which if not detected and corrected, may lead to widespread fatigue damage and wing structure failure. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data 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 Service Information Under 1 CFR Part 51

Viking has issued Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019. This service information describes procedures for a one-time inspection of the wing lower skin under the drag angle at a certain WS to determine if a certain repair or modification has been accomplished; repetitive visual inspections of fastener installation for abnormal conditions (missed, sheared, distorted, deformed or loose fastener heads/collar/nuts, and corrosion) and corrective actions as necessary; repetitive visual inspections of the open fastener holes for cracks, burrs, elongation, double or mis-drilled holes, or corrosion, and corrective actions as necessary; repetitive visual inspections of drag angles, wing lower skin, lower stringers, spar lower caps/webs, and fuselage structures (internally and externally) where fasteners are removed for surface cracks or evidence of distortion and surface defects (scratches, gouges, nicks, scores, dents, surface pitting/corrosion, or other surface damage), and corrective actions as necessary; repetitive bolt hole eddy current (BHEC) inspections of all identified fastener holes (except reference holes) for cracks, and corrective actions as necessary; repetitive eddy current surface scans for surface defects and cracks of the drag angle (along the bending radius) and all fastener holes in which crack(s) indication is observed, and corrective actions as necessary; repetitive structural gap checks of the mating surface between the wing lower skin and the drag angles and corrective actions as necessary; and procedures for replacing certain rivets with certain fasteners, and corrective actions as necessary. Corrective actions include, among other things, repair, replacement, and oversizing any affected holes.

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.

Costs of Compliance

The FAA estimates that this AD affects 4 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
Up to 48 work-hours × $85 per hour = Up to $4,080	$0	Up to $4,080	Up to $16,320.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $340, or $85 per product.

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

Paperwork Reduction Act

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

Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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):

2019–25–11 Viking Air Limited (Type Certificate previously held by Bombardier, Inc.; Canadair Limited): Amendment 39–21009; Docket No. FAA–2019–0710; Product Identifier 2019–NM–060–AD.

(a) Effective Date

This AD is effective February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Viking Air Limited (Type Certificate previously held by Bombardier, Inc.; Canadair Limited) airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model CL–215–1A10 airplanes, serial numbers 1001 through 1125 inclusive.

(2) Model CL–215–6B11 (CL–215T Variant) airplanes, serial numbers 1001 through 1125 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of cracks on the wing lower skin under the drag angle at a certain wing station (WS). The FAA is issuing this AD to address this condition, which if not detected and corrected, may lead to widespread fatigue damage and wing structure failure.

(f) Compliance

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

(g) Reporting of Existing Repairs

(1) Within 10 months after the effective date of this AD: Perform a one-time inspection to identify existing standard structural repair manual (SRM) repairs and non-standard repairs on the wing box between WS 355L and WS 355R in accordance with the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019. A review of airplane maintenance records is acceptable in lieu of this inspection if accomplishment of the repair or modification can be conclusively determined from that review. For the purposes of this AD, replacement of damaged wing box primary structural member is considered a ''repair.''

(2) If, during the inspection required by paragraph (g)(1) of this AD, a repair or modification of the wing box between WS 355L and WS 355R is found: Within 11 months after the effective date of this AD: Submit an Inspection Reply Form with details of the repair or modification to Viking Air Limited via email at *technical.support@vikingair.com* or via fax at 1–403–295–8888, and request inspection instructions for the repaired or modified structure in accordance with the procedures specified in paragraph (o)(2) of this AD.

(h) Record Keeping

Beginning no later than 30 days after the effective date of this AD: Record all water landings, land landings, and water drops, and use this data to determine compliance times for the inspections required by paragraph (i) of this AD. For the purposes of this AD, total operation cycles equals water drops plus water landings (non-water scooping/dropping operations) plus land landings. If there are no records of water landings, determine total operation cycles using only land landings and water drops.

(i) Repetitive Actions

Except as specified in paragraph (m) of this AD, at the earliest of the times specified in figure 1 to paragraphs (i), (l), and (m) of this AD: Do the actions specified in paragraphs (i)(1) through (6) of this AD. Repeat the actions thereafter at intervals not to exceed the earliest of the times specified in figure 2 to paragraphs (i) and (m) of this AD.

(1) Perform a visual inspection of the fastener installation for abnormal conditions (missed, sheared, distorted, deformed or loose fastener heads/collar/nuts, and corrosion) in accordance with Section II.A.1. of the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

(2) Perform a visual inspection of the open fastener holes for cracks, burrs, elongation, double or mis-drilled holes, and corrosion in accordance with Section II.A.1. of the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

(3) Perform a visual inspection of the drag angles, wing lower skin, lower stringers, spar lower caps/webs, and fuselage structures (internally and externally) where fasteners are removed for surface cracks or evidence of distortion and surface defects in accordance with Section II.A.2. of the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

(4) Perform a bolt hole eddy current (BHEC) inspection of all identified fastener holes (except reference holes) specified in Figure 1 of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019, for any cracks in accordance with Section II.A.3. of the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

(5) Perform an eddy current surface scan for surface defects and cracks of the drag angle (along the bending radius) and all fastener holes in which crack(s) indication have been observed in accordance with Section II.A.4. of the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

(6) Perform a structural gap check between the drag angles and the wing lower skin in accordance with Section II.A.5. of the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

Figure 1 to paragraphs (i), (l), and (m) – *Initial compliance times*

Description	Total Flight Hours as of the Effective Date of this AD	Total Water Drops as of the Effective Date of this AD	Total Operation Cycles as of the Effective Date of this AD
Initial Inspection Threshold	7,500	10,000	12,000

Figure 2 to paragraphs (i) and (m) – *Repetitive compliance times*

Description	Flight Hours	Water Drops	Total Operation Cycles
Repetitive Inspection	3,750	5,000	6,000

(j) Corrective Actions

If any of the findings identified in paragraphs (j)(1) through (6) of this AD are found, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Viking Air Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(1) If, during any inspection required by paragraph (i)(1) of this AD, any abnormal condition is found.

(2) If, during any inspection required by paragraph (i)(2) of this AD, any cracks, burrs, elongation, double or mis-drilled holes, or corrosion are found.

(3) If, during any inspection required by paragraph (i)(3) of this AD, any surface cracks or evidence of distortion or surface defects are found.

(4) If, during any inspection required by paragraph (i)(4) of this AD, any cracks are found.

(5) If, during any inspection required by paragraph (i)(5) of this AD, any surface defects or cracks are found.

(6) If, during any structural gap check required by paragraph (i)(6) of this AD, any gaps are found.

(k) Exception to Service Information

Where Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019, specifies that preventative Repair Engineering Order (REO) 215–57–V022 may be installed and certain inspections may be done as specified in that REO, this AD does not allow the use of that REO for compliance with this AD.

(l) Replace Rivets

For airplanes on which the actions specified in Viking Alert Service Bulletin 215–A568, Revision 3, dated June 15, 2016, or earlier, have been accomplished: At the earliest of the times specified in figure 1 to paragraphs (i), (l), and (m) of this AD, perform a one-time replacement of installed NAS1242AD rivets with Titanium Hi-Lite fasteners and do a BHEC inspection of the open holes for cracks in accordance with the Accomplishment Instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019. If any crack is found, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Viking Air Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Initial Compliance Time for Certain Airplanes

(1) For airplanes on which the actions specified in Viking Alert Service Bulletin 215–A568, Revision 3, dated June 15, 2016, or earlier, have not been accomplished: At the times specified in figure 3 to paragraph (m)(1) of this AD, accomplish the actions required by paragraph (i) of this AD. Repeat the actions thereafter at the times specified in figure 2 to paragraphs (i) and (m) of this AD. For the purposes of this AD, the earliest compliance time applies if the accumulated airplane flight times (flight hours, water drops, or total operation cycles) meet multiple criteria.

Figure 3 to paragraph (m)(1) – *Initial compliance times for airplanes on which the actions specified in Viking Alert Service Bulletin 215-A568, Revision 3, dated June 15, 2016, or earlier, have not been accomplished*

Total Flight Hours as of the Effective Date of this AD	Total Water Drops as of the Effective Date of this AD	Total Operation Cycles as of the Effective Date of this AD	Compliance Time
7,500 or more	Or 22,001 or more	Or 26,401 or more	Within 4 months after the effective date of this AD
7,500 or more	Or 20,001 to 22,000	Or 24,001 to 26,400	Within 8 months after the effective date of this AD
7,500 or more	Or 10,000 to 20,000	Or 12,000 to 24,000	Within 18 months after the effective date of this AD
Less than 7,500	And less than 10,000	And less than 12,000	At or before the initial inspection time in figure 1 to paragraphs (i), (l), and (m) of this AD, or within 18 months after the effective date of this AD, whichever occurs later

(2) For airplanes on which the actions specified in Viking Alert Service Bulletin 215–A568, Revision 3, dated June 15, 2016, or earlier, have been accomplished: At the times specified in figure 4 to paragraph (m)(2) of this AD, accomplish the actions required by paragraph (i) of this AD. Repeat the actions thereafter at the times specified in figure 2 to paragraphs (i) and (m) of this AD. For the purposes of this AD, the earliest compliance time applies if the accumulated airplane flight times (flight hours, water drops, or total operation cycles) meet multiple criteria.

Figure 4 to paragraph (m)(2) –*Initial compliance times for airplanes on which the actions specified in Viking Alert Service Bulletin 215-A568, Revision 3, dated June 15, 2016, or earlier, have been accomplished*

Total Flight Hours as of the Effective Date of this AD	Total Water Drops as of the Effective Date of this AD	Total Operation Cycles as of the Effective Date of this AD	Compliance Time
7,500 or more	Or 20,001 or more	Or 24,001 or more	Within 12 months after the effective date of this AD
7,500 or more	Or 10,000 to 20,000	Or 12,000 to 24,000	Within 18 months after the effective date of this AD
Less than 7,500	And less than 10,000	And less than 12,000	At or before the initial inspection time in figure 1 to paragraphs (i), (l), and (m) of this AD, or within 18 months after the effective date of this AD, whichever occurs later

(n) Reporting

At the applicable time specified in paragraph (n)(1) or (2) of this AD: Report the results of the actions required by paragraph (i) of this AD to Viking Air Limited via email at *technicalsupport@vikingair.com* or fax at +1–403–295–8888 in accordance with the instructions of Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

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

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

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Viking Air Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–07, dated March 4, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0710.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(q) 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) Viking Alert Service Bulletin 215–A568, Revision 4, dated January 22, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email *acs-technical.publications@vikingair.com*; internet *https://www.vikingair.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued in Des Moines, Washington, on December 12, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28470 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0983; Product Identifier 2019–NM–171–AD; Amendment 39–21010; AD 2019–25–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2016–18–02, which applied to certain The Boeing Company Model 777–200 and –300ER series airplanes. AD 2016–18–02 required replacing the low-pressure oxygen flex hoses with new non-conductive low-pressure oxygen flex hoses in the gaseous passenger oxygen system in airplanes equipped with therapeutic oxygen. This AD retains those actions and adds actions for certain airplanes. AD 2016–18–02 was prompted by the determination that the low-pressure oxygen flex hoses in the gaseous passenger oxygen system can potentially be conductive. This AD was further prompted by the determination that the associated service information is inadequate for certain airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 15, 2016 (81 FR 59834, August 31, 2016).

The FAA must receive any comments on this AD by February 20, 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 final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0983.

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–2019–0983; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3570; email: *susan.l.monroe@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2016–18–02, Amendment 39–18632 (81 FR 59834, August 31, 2016) (''AD 2016–18–02''), for certain The Boeing Company Model 777–200 and –300ER series airplanes. AD 2016–18–02 required replacing the low-pressure oxygen flex hoses with new non-conductive low-pressure oxygen flex hoses in the gaseous passenger oxygen system in airplanes equipped with therapeutic oxygen. AD 2016–18–02 resulted from a determination that the low-pressure oxygen flex hoses in the gaseous passenger oxygen system can potentially be conductive. The FAA issued AD 2016–18–02 to address the potential for electrical current to pass through the low-pressure oxygen flex hoses in the gaseous passenger oxygen system, which can cause the flex hoses to melt or burn and result in an oxygen-fed fire in the passenger cabin.

Actions Since AD 2016–18–02 Was Issued

Since AD 2016–18–02 was issued, the FAA has been advised that the required service information omitted certain instructions for Group 4 airplanes.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019. This service information describes procedures for replacing the low-pressure oxygen flex hoses with new non-conductive low-pressure oxygen flex hoses in the gaseous passenger oxygen system in airplanes equipped with therapeutic oxygen. This service information adds instructions (*i.e.,* Figures 6 and 10) that had previously been omitted for certain airplanes (*i.e.,* Group 4).

This AD requires Boeing Special Attention Service Bulletin 777–35–0041, dated April 8, 2016, which the Director of the Federal Register approved for incorporation by reference as of September 15, 2016 (81 FR 59834, August 31, 2016).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

Although this AD does not explicitly restate the requirements of AD 2016–18–02, this AD retains the requirements of AD 2016–18–02. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this AD. For certain airplanes, this AD adds actions that were omitted from the previous service information. This AD requires accomplishment of the actions

identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019, described previously. 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–2019–0983.

FAA's Justification and Determination of the Effective Date

There are currently no domestic operators of these products. Therefore, the FAA finds that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0983 and Product Identifier 2019–NM–171–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the following are the cost estimates to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement (actions retained from AD 2016–18–02).	Up to 33 work-hours × $85 per hour = Up to $2,805.	Up to $15,173	Up to $17,978.
New actions for Group 4, Configuration 2 airplanes.	6 work-hours × $85 per hour = $510	$0	$510.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all costs in the cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA has determined that this 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 removing Airworthiness Directive (AD) 2016–18–02, Amendment 39–18632 (81 FR 59834, August 31, 2016), and adding the following new AD:

2019–25–12 The Boeing Company: Amendment 39–21010; Docket No. FAA–2019–0983; Product Identifier 2019–NM–171–AD.

(a) Effective Date

This AD is effective January 21, 2020.

(b) Affected ADs

This AD replaces AD 2016–18–02, Amendment 39–18632 (81 FR 59834, August 31, 2016) (''AD 2016–18–02'').

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by the determination that the low-pressure oxygen flex hoses in the gaseous passenger oxygen system can potentially be conductive. The FAA is issuing this AD to address the potential for electrical current to pass through the low-pressure oxygen flex hoses in the gaseous passenger oxygen system, which can cause the flex hoses to melt or burn and result in an oxygen-fed fire in the passenger cabin.

(f) Compliance

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

(g) Replacement Actions

Within 72 months after September 15, 2016 (the effective date of AD 2016–18–02): Do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, paragraph (g)(1) or (2) of this AD, as applicable.

(1) Except as required by paragraph (g)(2) of this AD: Do the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0041, dated April 8, 2016; or Revision 1, dated August 14, 2019.

(2) For airplanes identified as Group 4 in Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019: Do the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019.

(h) Parts Installation Prohibition

As of September 15, 2016 (the effective date of AD 2016–18–02), no person may install on any airplane a low-pressure oxygen flex hose having a part number that is specified to be removed from an airplane in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019.

(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 ACO, send it to the attention of the person identified in paragraph (j) 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, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2016–18–02 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3570; email: *susan.l.monroe@faa.gov*.

(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.

(3) The following service information was approved for IBR on January 21, 2020.

(i) Boeing Special Attention Service Bulletin 777–35–0041, Revision 1, dated August 14, 2019.

(ii) [Reserved]

(4) The following service information was approved for IBR on September 15, 2016 (81 FR 59834, August 31, 2016).

(i) Boeing Special Attention Service Bulletin 777–35–0041, dated April 8, 2016.

(ii) [Reserved]

(5) 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*.

(6) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on December 12, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28464 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0703; Product Identifier 2019–NM–106–AD; Amendment 39–21014; AD 2019–25–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0100 airplanes. This AD was prompted by reports of smoke in the flight deck, in conjunction with the loss of electrical power. This AD requires replacement of affected generator power transfer contactors (GPTCs), essential bus transfer contactors (EBTCs), and auxiliary power transfer contactors (APTCs), 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 February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 10, 2020.

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 *https://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–2019–0703.

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–2019–0703; 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: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0120, dated May 29, 2019 (''EASA AD 2019–0120'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0100 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0100 airplanes. The NPRM published in the **Federal Register** on October 1, 2019 (84 FR 52044). The NPRM was prompted by reports of smoke in the flight deck, in conjunction with the loss of electrical power. The NPRM proposed to require replacement of affected GPTCs, EBTCs, and APTCs, as the most likely cause of the smoke was arcing inside one of these affected parts.

The FAA is issuing this AD to address smoke in the flight deck combined with the loss of electrical power, which could lead to excessive flightcrew workload and injury to the flightcrew. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data 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 2019–0120 describes procedures for replacing affected parts (GPTCs, EBTCs, and APTCs having part number DHR18–1) with serviceable parts. 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 4 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
2 work-hours × $85 per hour = $170	$5,400	$5,570	$22,280

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):

2019–25–15 Fokker Services B.V.: Amendment 39–21014; Docket No. FAA–2019–0703; Product Identifier 2019–NM–106–AD.

(a) Effective Date

This AD is effective February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0100 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by reports of smoke in the flight deck, in conjunction with the loss of electrical power. The FAA is issuing this AD to address smoke in the flight deck combined with the loss of electrical power, which could lead to excessive flightcrew workload and injury to the flightcrew.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0120, dated May 29, 2019 (''EASA AD 2019–0120'').

(h) Exceptions to EASA AD 2019–0120

(1) Where EASA AD 2019–0120 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0120 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 Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov*.

(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 2019–0120, dated May 29, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0120, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; internet *https://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–2019–0703.

(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 December 12, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28467 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0499; Product Identifier 2019–NM–088–AD; Amendment 39–21015; AD 2019–25–16]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–06–08, which applied to certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes. AD 2017–06–08 required revising the existing maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations. This AD continues to require that revision; adds a new requirement for revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; and adds airplanes to the applicability. Since the FAA issued AD 2017–06–08, the agency determined that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 11, 2017 (82 FR 16725, April 6, 2017).

ADDRESSES: For service information identified in this final rule, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170-Putim-12227–901 São Jose dos Campos-SP-Brazil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br*; internet *https://www.flyembraer.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–2019–0499.

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–2019–0499; 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: Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; email *krista.greer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The Agêencia Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian AD 2019–05–01, effective May 2, 2019; corrected July 1, 2019 (''Brazilian AD 2019–05–01'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''); to correct an unsafe condition for certain Embraer S.A. Model ERJ 170 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0499.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–06–08, Amendment 39–18832 (82 FR 16725, April 6, 2017) (''AD 2017–06–08''). AD 2017–06–08 applied to certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes. The NPRM published in the **Federal Register** on July 1, 2019 (84 FR 31246). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to continue to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The NPRM also proposed to require a new revision of the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, and to add airplanes to the applicability. The FAA is issuing this AD to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to prevent safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA is issuing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. See the MCAI for additional background information.

Action Since the NPRM Was Issued

Since the NPRM was issued ANAC published a correction to Brazilian AD 2019–05–01 to clarify that the initial compliance times identified as ''Threshold'' or ''T'' in EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018 (''EMBRAER 170/175 MRB–1621, Revision 14''), are expressed in total flight cycles and total flight hours. The FAA has revised paragraph (i)(1) of this AD to state ''For the purposes of this AD, the initial compliance times (identified as 'Threshold' or 'T' in EMBRAER 170/175 MRB–1621, Revision 14) are expressed in 'total flight cycles' or 'total flight hours,' as applicable.''

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise/Remove Initial Compliance Time for New Maintenance Tasks

Republic Airways, Inc., (Republic) requested that the compliance time specified in paragraph (i)(1) of the proposed AD be revised to more closely reflect the requirements of Brazilian AD 2019–05–01. The commenter also requested that the 90-day initial compliance time specified in paragraph (i)(2) of the proposed AD be removed. The commenter noted that Brazilian AD 2019–05–01 does not include a calendar day compliance time. The commenter asserted that a 90-day compliance time could require accomplishment of the tasks before they are required to be included in the maintenance program.

The FAA agrees to clarify the compliance times specified in this AD. The compliance time in paragraph (a)(1) of Brazilian AD 2019–05–01 requires operators to revise the maintenance or inspection program, as applicable, within three months after the effective date of that Brazilian AD. Paragraph (i) of this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD. The FAA typically specifies AD compliance times for revisions to the maintenance or inspection program as 90 days. Therefore, the FAA has not revised this AD regarding this issue.

Regarding the initial compliance time for doing the new tasks, paragraph (a)(3) of Brazilian AD 2019–05–01 states that the initial compliance time is at the applicable times specified in the revised maintenance program or within 600 flight cycles after the effective date of Brazilian AD 2019–05–01. Paragraph (i) of this AD states that the operator may choose to use the later of the compliance times specified in paragraphs (i)(1) and (2) of this AD. Paragraph (i)(1) of this AD states the initial compliance time is ''within the applicable times specified in EMBRAER 170/175 MRB–1621, Revision 14.'' Paragraph (i)(2) of this AD states the initial compliance time is ''within 90 days or 600 flight cycles after the effective date of this AD, whichever occurs later.'' The compliance time specified in paragraph (i)(2) of this AD matches the compliance time in paragraph (a)(3) of Brazilian AD 2019–05–01, along with an additional 90-day compliance time for operators who may reach the 600 flight cycles early (*i.e.,* before reaching 90 days). The 90-day compliance time is intended to provide relief for this scenario. Therefore, the FAA has not revised this AD regarding this issue.

Request To Allow Alternative Actions/Intervals in Subsequent Service Information

Horizon Air requested that paragraph (j) of the proposed AD be revised to allow for alternative actions and intervals provided in subsequent revisions of the identified service information. The commenter explained that paragraph (b) of Brazilian AD 2019–05–01 allows for alternative actions and intervals if the alternative action or interval is published in a subsequent

revision of EMBRAER 170/175 MRB–1621 and approved by ANAC. The commenter noted that Revision 15 to EMBRAER 170/175 MRB–1621 was issued June 28, 2019, and that there is no current temporary revision to this manual.

The FAA agrees with the commenter's observation that EMBRAER 170/175 MRB–1621, Revision 15, dated June 28, 2019 (''EMBRAER 170/175 MRB–1621, Revision 15''), was approved by ANAC. Changes in EMBRAER 170/175 MRB–1621, Revision 15, include incorporation of the life-limited item provided in EMBRAER Temporary Revision (TR) 14–1, dated November 13, 2018 (''EMBRAER TR 14–1''). Therefore, the same level of safety is maintained by incorporating the information in EMBRAER 170/175 MRB–1621, Revision 15, as incorporating the information in Part 1—Certification Maintenance Requirements, Part 2—Airworthiness Limitation Inspections (ALI)-Structures, Part 3—Fuel System Limitation Items, and Part 4—Life Limited Items; and EMBRAER TR 14–1 to Part 4—Life Limited Item; of Appendix A—Airworthiness Limitations of EMBRAER 170/175 MRB–1621, Revision 14.

Once the information in EMBRAER 170/175 MRB–1621, Revision 14, has been included in the general revisions of the EMBRAER 170/175 Maintenance Review Board Report, and the general revisions have been inserted into the maintenance or inspection program, as applicable, the requirement in paragraph (i)(1) of this AD is satisfied. Since EMBRAER 170/175 MRB–1621, Revision 15, contains the same information relative to this issue that is specified in both EMBRAER 170/175 MRB–1621, Revision 14, and EMBRAER TR 14–1, a request for an AMOC is not necessary. The FAA has not revised this AD regarding this issue.

Requests for Credit for Previously Accomplished Actions

Embraer and Republic Airways requested that operators be allowed to substitute the last accomplishment of tasks 53–23–014–0001 and 53–23–016–0001 for performing the initial accomplishment of tasks 53–23–014–005 and 53–23–016–0005. Republic Airways justified its request by explaining that tasks 53–23–014–0005 and 53–23–016–0005 were introduced in EMBRAER 170/175 MRB–1621, Revision 14, splitting existing tasks from previous EMBRAER 170/175 MRB–1621 revisions in order to increase the interval for some parts of the inspection reducing the frequency of access in areas that are difficult to access. Republic Airways noted that tasks 53–23–014–0001 and 53–23–016–0001 in EMBRAER 170/175 MRB–1621, Revision 13, dated May 10, 2017, and earlier revisions, included the same inspections as tasks 53–23–014–0005 and 53–23–016–0005. The commenters pointed out that ANAC granted an AMOC to Brazilian AD 2019–05–01 to provide credit for previously accomplished inspections, provided that the inspections included the area under the scuff plates.

The FAA agrees with the commenters' requests for the reasons provided. The FAA has included Brazilian AMOC No. 632/2019/GCPR/GGCP/SAR–ANAC, dated June 13, 2019, in paragraph (k)(1)(ii) of this AD as an approved AMOC for the corresponding provision of this AD. The FAA finds that inclusion of this superseding AMOC addresses the commenters' requests.

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 with the changes described previously and minor editorial changes. The FAA 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.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Embraer has issued Appendix A—Airworthiness Limitations, to EMBRAER 170/175 MRB–1621, Revision 14, dated September 27, 2018. This service information describes airworthiness limitations.

Embraer has also issued EMBRAER TR 14–1, to Part 4—Life-Limited Items, of Appendix A—Airworthiness Limitations, of the EMBRAER 170/175 MRB–1621, Revision 14, dated September 27, 2018. This service information describes, in Table 1 of the life-limited items, a new part number associated with main landing gear (MLG) life-limited components.

This AD also requires Appendix A—Airworthiness Limitations, of the EMBRAER 170/175 MRBR, MRB–1621, Revision 10, dated February 23, 2015, which the Director of the Federal Register approved for incorporation by reference on May 11, 2017 (82 FR 16725, April 6, 2017).

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.

Costs of Compliance

The FAA estimates that this AD affects 540 airplanes of U.S. registry.

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

The actions that are required by AD 2017–06–08 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2017–06–08 is $85 per product.

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the

Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

(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 removing Airworthiness Directive (AD) 2017–06–08, Amendment 39–18832 (82 FR 16725, April 6, 2017), and adding the following new AD:

2019–25–16 Embraer S.A.: Amendment 39–21015; Docket No. FAA–2019–0499; Product Identifier 2019–NM–088–AD.

(a) Effective Date

This AD is effective February 10, 2020.

(b) Affected ADs

This AD replaces AD 2017–06–08, Amendment 39–18832 (82 FR 16725, April 6, 2017) (''AD 2017–06–08'').

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes; certificated in any category; manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000761 inclusive.

(d) Subject

Air Transport Association (ATA) of America Codes 27, Flight controls; 28, Fuel; 52, Doors; 53, Fuselage; 54, Nacelles/pylons; 55, Stabilizers; 57, Wings; 71, Powerplant; and 78, Exhaust.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to prevent safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA is issuing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2017–06–08, with no changes. For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000453 inclusive: Within 12 months after May 11, 2017 (the effective date of AD 2017–06–08), revise the existing maintenance or inspection program, as applicable, to incorporate the airworthiness limitations specified in Part 1—Certification Maintenance Requirements (CMR); Part 2—Airworthiness Limitation Inspections (ALI)-Structures; Part 3—Fuel System Limitation Items (FSL); and Part 4—Life Limited Items (LLI); of Appendix A—Airworthiness Limitations; of the EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 10, dated February 23, 2015. The initial compliance times and repetitive intervals are specified in the applicable part of the EMBRAER 170/175 MRBR, MRB–1621, Revision 10, dated February 23, 2015.

(h) Retained No Alternative Actions Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs), With New Exception

This paragraph restates the action required by paragraph (j) of AD 2017–06–08, with a new exception. Except as required by paragraph (i) of this AD, after accomplishing the revisions required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) New Existing Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Part 1—Certification Maintenance Requirements, Part 2—Airworthiness Limitation Inspections (ALI)-Structures, Part 3—Fuel System Limitation Items, and Part 4—Life Limited Items; and EMBRAER Temporary Revision (TR) 14–1, dated November 13, 2018, to part 4—Life Limited Items; of Appendix A of the EMBRAER 170/175 MRBR, MRB–1621, Revision 14, dated September 27, 2018 (''EMBRAER 170/175 MRB–1621, Revision 14''). The initial compliance time for doing the tasks is at the later of the times specified in paragraphs (i)(1) and (2) of this AD. Accomplishing the revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(1) Within the applicable times specified in EMBRAER 170/175 MRB–1621, Revision 14. For the purposes of this AD, the initial compliance times (identified as ''Threshold'' or ''T'' in EMBRAER 170/175 MRB–1621, Revision 14) are expressed in ''total flight cycles'' or ''total flight hours,'' as applicable.

(2) Within 90 days or 600 flight cycles after the effective date of this AD, whichever occurs later.

(j) No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov*.

(i) 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.

(ii) Brazilian AMOC No. 632/2019/GCPR/GGCP/SAR–ANAC, dated June 13, 2019, is

approved as an AMOC for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD 2019–05–01, effective May 2, 2019; corrected July 1, 2019; for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0499.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; email *krista.greer@faa.gov*.

(m) 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.

(3) The following service information was approved for IBR on February 10, 2020.

(i) Appendix A—Airworthiness Limitations of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018.

(ii) Embraer Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4—Life Limited Items, of Appendix A of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018.

(4) The following service information was approved for IBR on May 11, 2017 (82 FR 16725, April 6, 2017).

(i) Appendix A—Airworthiness Limitations, of the EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 10, dated February 23, 2015.

(ii) [Reserved]

(5) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170-Putim-12227–901 São Jose dos Campos-SP-Brazil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br*; internet *https://www.flyembraer.com*.

(6) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on December 12, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28466 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0993; Product Identifier 2019–NM–198–AD; Amendment 39–21017; AD 2019–25–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by a report of a wing stall (wing drop/uncommanded roll) during landing flare, due to ice on the wing leading edges that was not detected by the anti-ice system. This AD requires revising the existing airplane flight manual (AFM) to include a limitation and normal operating procedure for the wing anti-ice system. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 21, 2020.

The FAA must receive comments on this AD by February 20, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Qu ébec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.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–2019–0993.

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–2019–0993; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–41, dated November 7, 2019, (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0993.

This AD was prompted by a report of a wing stall (wing drop/uncommanded

roll) during landing flare, due to ice on the wing leading edges that was not detected by the anti-ice system. The FAA is issuing this AD to address ice on the wing leading edges, which could adversely affect the stall speeds, stall characteristics, and the protection provided by the stall protection system, which could result in loss of control of the airplane during takeoff or landing. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following operational limitation and procedure in the existing Bombardier CRJ Series Regional Jet Model CL–600–2B19 Airplane Flight Manual, CSP A–012, Volume 1, Revision 72, dated July 12, 2019. This service information describes a limitation and normal operating procedure for the wing anti-ice system.

- Paragraph 3.—''Operation in Icing Conditions,'' of Section 02–04, ''Operating Limitations,'' of Chapter 2, LIMITATIONS.''
- Paragraph 5.—''Prior to Landing'' of Section 04–02, ''Consolidated Procedures'' of Chapter 4 ''NORMAL PROCEDURES.''

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires revising the existing AFM to incorporate a limitation and normal operating procedure for the wing anti-ice system.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because ice on the wing leading edges could adversely affect the stall speeds, stall characteristics, and the protection provided by the stall protection system, which could result in loss of control of the airplane during takeoff or landing. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0993; Product Identifier 2019–NM–198–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 503 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$42,755

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

power and responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–25–18 Bombardier, Inc.: Amendment 39–21017; Docket No. FAA–2019–0993; Product Identifier 2019–NM–198–AD.

(a) Effective Date

This AD becomes effective January 21, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by a report of a wing stall (wing drop/uncommanded roll) during landing flare, due to ice on the wing leading edges that was not detected by the anti-ice system. The FAA is issuing this AD to address undetected ice on the wing leading edges, which could adversely affect the stall speeds, stall characteristics, and the protection provided by the stall protection system, which could result in loss of control of the airplane during takeoff or landing.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the existing AFM to incorporate the information specified in paragraphs (g)(1) and (2) of this AD.

(1) Paragraph 3.—''Operation in Icing Conditions'' of Section 02–04, ''Operating Limitations,'' of Chapter 2, LIMITATIONS,'' of the Bombardier CRJ Series Regional Jet Model CL–600–2B19 Airplane Flight Manual, CSP A–012, Volume 1, Revision 72, dated July 12, 2019.

(2) Paragraph 5.—''Prior to Landing'' of Section 04–02, ''Consolidated Procedures'' of Chapter 4 ''NORMAL PROCEDURES,'' of the Bombardier CRJ Series Regional Jet Model CL–600–2B19 Airplane Flight Manual, CSP A–012, Volume 1, Revision 72, dated July 12, 2019.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–41, dated November 7, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0993.

(2) For more information about this AD, contact Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(j) 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) Bombardier CRJ Series Regional Jet Model CL–600–2B19 Airplane Flight Manual, CSP A–012, Volume 1, Revision 72, dated July 12, 2019.

(A) Paragraph 3.—''Operation in Icing Conditions'' of Section 02–04, ''Operating Limitations,'' of Chapter 2, LIMITATIONS.''

(B) Paragraph 5.—''Prior to Landing'' of Section 04–02, ''Consolidated Procedures'' of Chapter 4 ''NORMAL PROCEDURES.''

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on December 20, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28365 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 191217–0116]

RIN 0694–AH89

Addition of Software Specially Designed To Automate the Analysis of Geospatial Imagery to the Export Control Classification Number 0Y521 Series

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: In this interim final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to make certain items subject to the EAR and to impose a license requirement for the export and reexport of those items to all destinations, except Canada. Specifically, this rule classifies software specially designed to automate the analysis of geospatial imagery, as

specified, under the Export Control Classification Number (ECCN) 0Y521 series, specifically under ECCN 0D521. BIS adds this item to the 0Y521 series of ECCNs upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, and other agencies as appropriate, that the items warrant control for export because the items may provide a significant military or intelligence advantage to the United States or because foreign policy reasons justify control, pursuant to the ECCN 0Y521 series procedures.

DATES: This rule is effective January 6, 2020. Comments must be received by March 6, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov*. The *regulations.gov* ID number for this rule is BIS–2019–0031. All comments (including any personally identifying information) will be made available for public inspection and copying.
- *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AH89.

FOR FURTHER INFORMATION CONTACT: Aaron Amundson, Director, Information Technology Division, Office of National Security and Technology Transfer Controls, at email *Aaron.Amundson@bis.doc.gov* or by phone at (202) 482–5299.

SUPPLEMENTARY INFORMATION:

Background

The 0Y521 Series

The 0Y521 series of ECCNs was established in April 2012 (77 FR 22191, April 13, 2012). Items in the 0Y521 series, which includes ECCNs 0A521, 0B521, 0C521, 0D521, and 0E521, are described in Supplement No. 5 to part 774 of the Export Administration Regulations (EAR). Items in the 0Y521 series of ECCNs are added upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, and other agencies as appropriate, that the items warrant control for export because the items may provide a significant military or intelligence advantage to the United States or because foreign policy reasons justify control. Pursuant to § 742.6(a)(7) of the EAR, the 0Y521 series is a temporary holding classification that only lasts for one year from the date a final rule is published in the **Federal Register** listing the item in Supplement No. 5 to part 774, unless the 0Y521 classification is extended in accordance with described procedures, and provided that the U.S. Government submit a proposal to the relevant multilateral regime(s) to obtain multilateral controls over the item. Before the 0Y521 classification expires, an 0Y521 item may be reclassified and moved under a different ECCN on the Commerce Control List (CCL), if appropriate. If the item has not been moved to a more permanent ECCN and the 0Y521 classification expires, the item is designated EAR99. ''EAR99'' means that an item is subject to the EAR but not specified on the CCL.

Items classified under the 0Y521 series are controlled for regional stability (RS) Column 1 reasons, with a case-by-case license application review policy. The only license exception available for these items at this time is for exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government (License Exception GOV), specifically within the scope of § 740.11(b)(2)(ii) of the EAR. This limitation is further described in § 740.2(a)(14) of the EAR.

Addition of Software Specially Designed To Automate the Analysis of Geospatial Imagery Under the 0Y521 Series in This Rule

In this interim final rule, the Bureau of Industry and Security (BIS) amends the EAR to classify certain items subject to the EAR under the 0Y521 series and to impose a license requirement for the export and reexport of those items to all destinations, except Canada, for RS Column 1 reasons. Specifically, the items that will be subject to these new controls are described under ECCN 0D521 in the 0Y521 series table found in Supplement No. 5 to part 774 of the EAR, as follows:

ECCN 0D521 No. 1

Geospatial imagery ''software'' ''specially designed'' for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds, and having all of the following:

1. Provides a graphical user interface that enables the user to identify objects (*e.g.,* vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest;
2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples;
3. Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and
4. Identifies objects in geospatial imagery using the trained Deep Convolutional Neural Network by matching the rotational pattern from the positive samples with the rotational pattern of objects in the geospatial imagery.

Technical Note: A point cloud is a collection of data points defined by a given coordinate system. A point cloud is also known as a digital surface model.

Consistent with other 0Y521 series items, *license requirements* for the items described under the first entry for ECCN 0D521 of the 0Y521 series, appear in § 742.6(a)(7) of the EAR. The U.S. Government currently plans to *propose to an appropriate multilateral regime,* in this case the Wassenaar Arrangement, that multilateral controls be placed on these items.

License Applications for the New ECCN 0D521 No. 1

License applications for these items may be submitted through SNAP–R in accordance with § 748.6 (General instructions for license applications) of the EAR. Exporters are directed to include detailed descriptions and technical specifications with the license application, and to identify the item's ECCN.

This rule is being issued in interim final form because while the government believes that it is in the national security interests of the United States to immediately implement these controls, it also wants to provide the interested public with an opportunity to comment on the control of new items. Comments may be submitted in accordance with the **DATES** and **ADDRESSSES** sections of this rule. BIS will review and, if appropriate, address such comments through rulemaking consistent with the process described in the final rule that created the ECCN 0Y521 series.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115–232) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export

Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action''. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Pursuant to Section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

3. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694–0088 and 0694–0137. This action is not expected to materially increase the number of submissions under these collections. Any comments regarding these collections of information, including suggestions for reducing the burden, may be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

4. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

List of Subjects in 15 CFR Part 774

Exports, Rexporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. 4801–4582; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; and as extended by the Notice of August 14, 2019, 84 FR 41881 (August 15, 2019).

■ 2. Amend Supplement No. 5 to part 774 by removing the reserved entry under ''0D521. Software'' and adding in its place entry ''No. 1'' to read as follows:

SUPPLEMENT NO. 5 TO PART 774—ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521

*	*	*	*	*	*	*
Item descriptor. *Note:* The description must match by model number or a broader descriptor that does not necessarily need to be company specific.			Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date).	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.		Item-specific license exception eligibility.
*	*	*	*	*	*	*
0D521. Software.						
No.1 Geospatial imagery ''software'' ''specially designed'' for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds, and having all of the following: 1. Provides a graphical user interface that enables the user to identify objects (*e.g.*, vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest; 2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples; 3. Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and			January 6, 2020 (ID)	January 6, 2021		License Exception GOV under § 740.11(b)(2)(ii) only.

SUPPLEMENT NO. 5 TO PART 774—ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521—Continued

4. Identifies objects in geospatial imagery using the trained Deep Convolutional Neural Network by matching the rotational pattern from the positive samples with the rotational pattern of objects in the geospatial imagery.

Technical Note: A point cloud is a collection of data points defined by a given coordinate system. A point cloud is also known as a digital surface model.

* * * * * * *

Dated: December 17, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2019–27649 Filed 1–3–20; 8:45 am]

BILLING CODE 3510–33–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Price Changes and Minor Classification Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On October 22, 2019, the Postal Service published proposed product and price changes to reflect price adjustments and other minor classification changes filed with the Postal Regulatory Commission (PRC). The PRC found that price adjustments and classification changes contained in the Postal Service's notice may go into effect on January 26, 2020. The Postal Service will revise Notice 123, *Price List* to reflect the new prices and *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect minor classification changes.

DATES: *Effective date:* January 26, 2020.

FOR FURTHER INFORMATION CONTACT: Michelle Lassiter at 202–268–2914.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Response

On October 9, 2019, the Postal Service filed a notice with the PRC in Docket No. R2020–1 of mailing services price adjustments, to be effective on January 26, 2020. On October 22, 2019, the Postal Service published a notification of proposed product and price changes in the **Federal Register** entitled ''International Mailing Services: Proposed Product and Price Changes—CPI'' (84 FR 56406). The notification included price changes that the Postal Service would adopt for products and services covered by IMM and publish in Notice 123, *Price List,* on *Postal Explorer®* at *pe.usps.com.* The Postal Service received no comments.

On October 9, 2019, in PRC Docket No. MC2020–7, the Postal Service proposed to update country names throughout mailing standards, changing ''Macedonia, Republic of'' to ''North Macedonia, Republic of.'' On October 22, 2019, the Postal Service published a notification of proposed product and price changes in the **Federal Register** entitled ''International Mailing Services: Proposed Product and Price Changes—CPI'' (84 FR 56406). That proposed rule noted that throughout IMM, all references to ''Macedonia, Republic of'' would be changed to ''North Macedonia, Republic of'' or the short name ''North Macedonia'' would be placed in correct alphabetical order in lists. The Postal Service received no comments.

II. Decision of the Postal Regulatory Commission

As stated in the PRC's Order No. 5321 issued on November 22, 2019, and the PRC's Order No. 5340, issued on December 6, 2019, in PRC Docket No. R2020–1, the PRC found that the prices in the Postal Service's notice in Docket No. R2020–1, may go into effect on January 26, 2020. The new prices will accordingly be posted in Notice 123, *Price List* on *Postal Explorer* at *pe.usps.com.*

As stated in the PRC's Order No. 5297, issued on November 8, 2019, in PRC Docket No. MC2020–7, the PRC approved the proposed minor classification changes replacing the country name of ''Macedonia, Republic of'' with ''North Macedonia, Republic of.'' The changes to the IMM will accordingly be posted in the January 26, 2020, revision of the IMM on *Postal Explorer* at *pe.usps.com.*

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

[Throughout the IMM, change all references to ''Macedonia, Republic of'' to ''North Macedonia, Republic of'' and place in correct alphabetical order in lists. Revised sections include 213.5, 292.45, 322.2; the Index of Countries and Localities; the Country Price Groups and Weight Limits; and the Individual Country Listings.]

* * * * *

New Prices Will Be Listed in the Updated Notice 123, Price List

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2019–27702 Filed 1–3–20; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 19–118; FRS 16309]

TRS Fund Contributions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) modifies the cost recovery rules for internet Protocol Captioned

Telephone Service (IP CTS) so that intrastate as well as interstate end-user revenues of telecommunications carriers and Voice over internet Protocol (VoIP) service providers are included in the calculation of Telecommunications Relay Services (TRS) Fund contributions to support the costs of providing IP CTS.

DATES: *Effective Date:* This rule is effective February 5, 2020.

Compliance Date: Intrastate carriers and VoIP service providers shall be required to contribute revenue to fund intrastate IP CTS starting July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email *Michael.Scott@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, document FCC 19–118, adopted November 22, 2019, released November 25, 2019, in CG Docket Nos. 13–24 and 03–123. The Commission sought comment on the issue in the Further Notice of Proposed Rulemaking (*2018 IP CTS Modernization FNPRM*), published at 83 FR 33899, July 18, 2018. The full text of document FCC 19–118 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS) and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Congressional Review Act

The Commission sent a copy of document FCC 19–118 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 19–118 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Therefore, it also 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, *see* 44 U.S.C. 3506(c)(4).

Synopsis

1. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that ''interstate and intrastate'' TRS are available to individuals who are deaf, hard of hearing, or deaf-blind or who have a speech disability. 47 U.S.C. 225. Section 225 of the Act also authorizes, but does not require, the establishment of state-administered TRS programs, subject to approval by the Commission. The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS, including rules on cost separation, which ''shall generally provide'' that interstate TRS costs are recovered from interstate services and intrastate TRS costs are recovered from the intrastate jurisdiction. 47 U.S.C. 225(d)(3)(B). To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993. Interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service, are required to contribute to the TRS Fund, on a quarterly basis, a specified percentage of their interstate end-user revenues for the prior year. The scope of the TRS Fund changed beginning in 2000. To encourage the development of internet-based TRS, including IP CTS, the Commission adopted interim measures authorizing use of the TRS Fund to compensate TRS providers for all compensable costs of internet-based TRS calls, whether interstate or intrastate. Meanwhile, TRS Fund contributions continued to be collected solely from providers of interstate telecommunications and VoIP services based on a percentage of their interstate end-user revenues.

2. The Commission amends its rules to provide that TRS Fund contributions for the support of IP CTS shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider. As a result, TRS Fund contributions will be required from providers of intrastate-only telecommunications and VoIP services. The total contributions needed to support the TRS Fund will not be affected. The Commission makes this change for several reasons.

3. *First,* the current arrangement, whereby all IP CTS costs are compensated from the TRS Fund, with contributions limited to a percentage of contributors' interstate revenues, was authorized only as an interim measure, to speed the development of IP CTS.

4. *Second,* the inherent inequities and limitations of this contribution arrangement loom much larger today, given the current size of the IP CTS funding requirement. Today, IP CTS expenditures are projected to be $913 million in Fund Year 2019–20—64.5% of TRS Fund payments to TRS providers. As a result, the burden of supporting IP CTS has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. And providers of intrastate-only services contribute nothing to support IP CTS.

5. *Third,* this asymmetric allocation of the IP CTS funding burden has not been shown to be justified by the jurisdictional characteristics of the telephone calls for which captions are provided via IP CTS. IP CTS, which is available to consumers in every state, provides captions for both intrastate and interstate phone calls.

6. *Fourth,* the recovery of IP CTS costs based on interstate revenues alone may create unintended market distortions, improperly increasing the price of, and reducing the demand for, interstate telephony services.

7. *Fifth,* the total amount of interstate end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact on interstate service providers and users. Ensuring that contributions to support IP CTS are calculated based on intrastate as well as interstate revenues will not only address the asymmetry of the funding burden but also strengthen the funding base for this service.

8. *Legal Authority.* The Commission has statutory authority under section 225 of the Act to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support IP CTS. Section 225 expressly directs the Commission to ensure that both interstate *and intrastate* TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including, explicitly, TRS cost recovery. 47 U.S.C. 225(b), (d)(3). Indeed, Congress expressly carved section 225 out from the Act's general reservation of state authority over intrastate communications. 47 U.S.C. 152(b).

9. Where a state undertakes to offer intrastate TRS through a state program, section 225 of the Act allows the state to determine how its program is funded. However, if a type of TRS (such as IP CTS) is *not* made available through a state program, the Commission—which

is mandated to ensure the availability of both interstate *and intrastate* TRS—necessarily retains authority to enable cost recovery. Indeed, section 225 of the Act affords the Commission, without limitation, ''the same authority, power, and functions with respect to *common carriers engaged in intrastate communication* as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.'' 47 U.S.C. 225(b)(2) (emphasis added). This includes the authority to collect contributions from intrastate carriers where necessary to ensure that the provision of TRS is adequately funded—and Congress has elsewhere prescribed that VoIP service providers shall ''participate in and contribute to the Telecommunications Relay Services Fund . . . in a manner prescribed by the Commission . . . consistent with and comparable to the obligations of other contributors to such Fund.'' 47 U.S.C. 616.

10. A contrary reading of section 225 of the Act could hinder the Commission's ability to continue ensuring the availability of technologically advanced versions of TRS, such as IP CTS, which are far more widely used and enable more effective communication than the older versions offered through state programs. Internet-based TRS has not been added to state programs largely due to jurisdictional concerns. Given the apparent limits on state commissions' authority, the Commission's ability to structure appropriate funding for internet-based TRS should not be artificially constrained by a distorted reading of the federal statute.

11. *Arguments for Deferral.* The Commission sees no need to defer expansion of the contribution base in order to address the matter of how IP CTS is classified as a service. The text of section 225 of the Act leaves no doubt that TRS—whatever the classification, and whether or not the internet is involved—can be used for intrastate as well as interstate calling, and that the resulting costs are recoverable from providers of intrastate as well as interstate telecommunications and VoIP services. The Commission also declines to defer this matter pending referral to and completion of Joint Board proceedings. The Commission is not modifying how TRS cost separation is determined. Indeed, Fund contributions will be implemented without cost separation, and will be unaffected by how many IP CTS minutes might be deemed intrastate or interstate. Finally, the Commission declines to defer expansion of the IP CTS contribution base pending further measures to address waste, fraud, and abuse, which are based on the incorrect assumption that such expansion is needed solely due to the current level of program costs.

12. *Implementation.* The Commission adopts a single contribution factor for IP CTS that is applied to all the end-user revenues of each TRS Fund contributor. First, the TRS Fund administrator shall determine an IP CTS revenue requirement, which shall include the portion of the TRS Fund reserve that is attributable to IP CTS. Next, based on the total intrastate and interstate end-user revenue data reported by TRS Fund contributors on Forms 499–A, the TRS Fund administrator shall compute a separate TRS Fund contribution factor for IP CTS, by dividing the IP CTS revenue requirement by contributors' total intrastate and interstate end-user revenues. This contribution factor shall then be used to determine the portion of each contributor's total end-user revenue that must be paid into the TRS Fund to support IP CTS.

13. The single-factor method requires only minor modification of the current TRS Fund contribution rules, is simple and feasible to administer, and distributes the funding obligation in a reasonably equitable manner, ensuring that each TRS Fund contributor pays the same percentage of its total interstate and intrastate end-user revenues for support of IP CTS. An alternative approach, which would entail the calculation of separate contribution factors for interstate and intrastate IP CTS, based on estimates of the proportions of IP CTS minutes and provider costs that are interstate and intrastate, is impracticable at this time.

14. The Commission directs the Wireline Competition Bureau to revise the instructions for Form 499–A as necessary to conform to document FCC 19–118. The Commission also directs the Universal Service Administrative Company (USAC) and the TRS Fund administrator to take steps to ensure that providers of telecommunications services and VoIP services, including entities with only intrastate revenue, are able to register and remit payment to the TRS Fund.

15. *Compliance date.* Intrastate carriers and VoIP service providers shall be required to contribute revenue to fund intrastate IP CTS starting with TRS Fund Year 2020–21. This will allow a reasonable time for the Commission to amend relevant forms, for any carriers and VoIP service providers that have only intrastate revenue to register and prepare for submission of IP CTS contributions to the TRS Fund administrator, and for the TRS Fund administrator and USAC to process such registrations in accordance with the rules adopted herein.

16. *Economic Impact.* If TRS Fund expenditures on IP CTS were to continue at the 2019–20 level of approximately $913 million, then approximately 41% of this total, or $374 million, would be contributed as a percentage of interstate end-user revenues, and 59%, or $539 million, would be contributed as a percentage of intrastate end-user revenues. This represents a $539 million transfer in the incidence of TRS Fund contributions from the interstate to the intrastate jurisdiction, although the total funding requirement does not change.

17. Expanding the TRS Fund contribution base for IP CTS to include intrastate revenues will likely reduce the TRS funding costs that are passed on by contributing providers to users of interstate telecommunications and VoIP services, and concomitantly increase the costs included in rates paid by users of intrastate services. To the extent it has such effects, this rule change will remove distortions in the relative prices of intrastate and interstate services, reducing such prices where they are high and raising such prices somewhat where they are low.

18. *The State Program Alternative.* In the *2018 IP CTS Modernization FNPRM,* as an alternative way to address the inequity in IP CTS cost recovery, the Commission sought comment on whether to require that IP CTS be included in all state-administered TRS programs. Under this approach, contributions to the TRS Fund would continue to be based on interstate end-user revenues only. However, the Fund would support only interstate IP CTS costs, while the states themselves would determine how to fund intrastate IP CTS, just as they currently do for non-internet-based forms of TRS. The Commission concludes that this alternative would not be practicable or beneficial at this time. To date, no state has indicated any degree of readiness to take responsibility for administering and funding intrastate IP CTS, and a number of states raise questions regarding their authority under state law to incorporate IP CTS into state programs. In addition, mandating the inclusion of IP CTS could lead some states to terminate their TRS programs. Further, state administration of IP CTS could lead to the elimination of competition among multiple IP CTS providers, a result that would conflict with the Commission's prior support of

such competition to encourage higher quality IP CTS offerings.

19. Although the Commission is not mandating states to incorporate IP CTS into their TRS programs, a state is not precluded from seeking Commission approval to add IP CTS to a state-funded TRS program. If, at some future point, a state seeks authority to fund and administer IP CTS, the Commission will address at that time the related issues of competition policy and program efficiency. In the event that a state's request to fund and administer intrastate IP CTS is approved, appropriate steps will be taken at that time to identify or estimate intrastate IP CTS minutes and costs and determine by how much to reduce the TRS Fund contributions from telecommunications and VoIP service providers operating within the state.

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *2018 IP CTS Modernization FNPRM*. The Commission sought written public comment on the proposals in the *2018 IP CTS Modernization FNPRM,* including comment on the IRFA. No comments were received in response to the IRFA.

Need For, and Objectives of, the Rules

21. Document FCC 19–118 modifies the cost recovery rules for IP CTS to provide a fair and reasonable allocation of the funding burden for TRS. Specifically, providers of intrastate as well as interstate telecommunications and VoIP services must contribute to the TRS Fund for the support of IP CTS, based on a percentage of their total annual end-user revenues from intrastate, interstate, and international services. The TRS Fund administrator will compute a separate TRS Fund contribution factor for IP CTS, by dividing the IP CTS revenue requirement by contributors' total intrastate and interstate end-user revenues. This contribution factor shall then be used to determine the portion of each contributor's total end-user revenue that must be paid into the TRS Fund to support IP CTS. Requiring contributions to include intrastate revenue to support IP CTS removes contribution asymmetry and ensures intrastate revenue is available to support intrastate IP CTS. This action both reduces the inequitable burden on providers of interstate telecommunications and VoIP services and strengthens the funding base for this critical service.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

22. No comments were filed in response to the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

23. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Small Entities Impacted

24. The rules adopted in document FCC 19–118 will affect the obligations of intrastate and interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service. These services are included in the economic categories: Wired Telecommunications Carriers, Telecommunications Resellers, Wireless Telecommunications Carriers (except Satellite), and All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

25. Expanding the TRS Fund contribution base to include intrastate revenue for IP CTS will require providers of intrastate telecommunications and VoIP services that are not currently registered with the TRS Fund administrator to register with the administrator and submit contribution payments to the TRS Fund. Contributors to the TRS Fund will see two contribution rates, one for IP CTS and another for all other forms of TRS, but there will not be a change to how entities report their revenues on the FCC Form 499–A for purposes of contributing to the TRS Fund.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

26. Expanding the TRS Fund contribution base to include intrastate revenue for IP CTS requires small entities that provide only intrastate telecommunications and VoIP services to register with and submit payment to the TRS Fund administrator. However, such burdens would be offset by the public benefits of appropriately funding the provision of IP CTS from a broader contribution base. Expanding the contribution base to include intrastate revenue will also reduce the contribution burden of providers of interstate telecommunications and VoIP service by increasing the number of overall contributors to include providers of intrastate-only telecommunications and VoIP services, and by expanding the total revenue from which providers make contributions, thereby decreasing each individual provider's total annual contribution from interstate end-user revenues. In addition, expanding the contribution base ensures a more equitable distribution of costs that better aligns with use of interstate and intrastate IP CTS. Specifically, the adopted contribution approach ensures that each contributor pays the same percentage of its total interstate and intrastate end-user revenues for support of IP CTS. The prior approach, by contrast required that 100% of the contributions be based on interstate revenues, even though it is likely that less than half of IP CTS minutes are interstate.

Ordering Clauses

27. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, document FCC 19–118 *is adopted*, and part 64 of title 47 is amended.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission
Secretary.
Marlene Dortch,

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, and 1401–1473, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A), (B), and (I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph (c)(5)(ii), costs caused by intrastate TRS shall be recovered from

the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS and IP Relay shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by the provision of interstate and intrastate IP CTS, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) * * *

(A) *Contributions.* Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund as described in this paragraph (c)(5)(iii): For the support of TRS other than IP CTS on the basis of interstate end-user revenues; and for the support of IP CTS on the basis of interstate and intrastate revenues. Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and the applicable contribution factors determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least $25 per year. Contributors whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a ''Telecommunications Reporting Worksheet'' (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

* * * * *

(I) *Information filed with the administrator.* The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a provider submitting minutes to the Fund for compensation must, in each instance, certify, under penalty of perjury, that the minutes were handled in compliance with section 225 of the Communications Act of 1934 and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls. The CEO, CFO, or other senior executive of a provider submitting cost and demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer and Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*see* § 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*see* § 52.16 of this chapter), and the long-term local number portability cost recovery (*see* § 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate and intrastate common carriers and VoIP service providers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

* * * * *

[FR Doc. 2019–27391 Filed 1–3–20; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 85, No. 3
Monday, January 6, 2020

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AN90

High-3 Calculation for Privatized Senate Restaurant Civil Service Retirement System and Federal Employees' Retirement System Employees and Annuitants

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes this rule to allow for the continuation of civil service retirement coverage for career Senate Restaurants employees of the Architect of the Capitol, who became employees of a private contractor under a food services contract on September 16, 2008, and career civilian employees of the United States permanently assigned to the food services operations of the House of Representatives after those operations were transferred to a private contractor on January 2, 1987.

DATES: Send comments on or before March 6, 2020.

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

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

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

- *Email: Comboxinternet@opm.gov.* Include Docket No. or RIN in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Jane Bancroft, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

Introduction

OPM proposes this rule to implement the provisions of Public Law 110–279, 122 Stat. 2604 (2008) (codified at 2 U.S.C. 2051), as amended by Public Law 116–21, S. 1436 (2019), which allowed United States (Senate) Restaurants employees the ability to elect to retain Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) coverage after the Architect of the Capitol transferred its food services functions to a private contractor. In 2019, Congress amended 2 U.S.C. 2051 by requiring that the basic pay paid by the food services contractor must be treated as ''basic pay'' for purposes of retirement provisions. As a result, OPM is proposing this rule to comply with the Congressional mandate requiring that OPM promulgate regulations reflecting these provisions. OPM is also correcting an oversight related to its publication of rules implementing the provisions of sec. 111 of Public Law 99–500, 100 Stat. 1783–348 (1986). The enactment of these provisions similarly allowed House of Representatives (House) food services employees to elect to retain CSRS and FERS retirement coverage when the House transferred its food services functions to a private contractor. OPM's regulations implementing these provisions were published at 53 FR 10055 (1988) and were promulgated under 5 CFR 831.202. Although OPM's regulations provided rules associated with affected former House food services employees covered under CSRS, OPM did not properly publish regulations associated with affected former House food services employees under FERS. Because this rule proposes to amend OPM's preexisting House food services regulations at 5 CFR 831.202 to include affected former Senate Restaurants employees as a population subject to this regulation, and because OPM is proposing equivalent regulations affecting former Senate Restaurants employees covered under FERS at 5 CFR 842.110, OPM is proposing to correct this oversight by including affected former House food services employees as a population that is subject to the regulations promulgated under 5 CFR 842.110.

Background

On October 18, 1986, Congress enacted Public Law 99–500 which allowed food service employees for the House of Representatives to elect to retain coverage under CSRS and FERS prior to becoming employees of a private contractor after the food services operations for the House was transferred to a private contract on January 3, 1987. Section 111(c)(1) of this Act provided that OPM must publish regulations to implement these provisions. As a result, on February 19, 1987, OPM published interim regulations associated with this Act at 52 FR 5069 (1987) (promulgated under 5 CFR 831.307). OPM did not receive comments on this interim rule, and on March 29, 1988, it issued a final rule adopting its interim rule (53 FR 10055 (1988)). While OPM's rule promulgated regulations related to former House food services employees covered under CSRS, it did not provide equivalent regulations for former House food services employees covered under FERS.

Similarly, on September 16, 2008, Senate Restaurants employees of the Architect of the Capitol became employees of a private corporation after the food services operations for the Senate Restaurants were transferred to a private contract. Prior to this transfer, Congress enacted Public Law 110–279, 122 Stat. 2604 (2008)(codified at 2 U.S.C. 2051), which allowed Senate Restaurants employees to elect to retain coverage under CSRS and FERS upon transfer. Unlike the 1987 House food service employee provisions, however, the Senate Restaurants employees' provisions capped the rate of basic pay of affected Senate Restaurants employees at the rates of basic pay they were paid by the Architect of the Capitol prior to transfer to the private contract in 2008.

However, on June 12, 2019, Congress enacted technical corrections to the 2008 Act related to Senate Restaurants employees, removing language from 2 U.S.C. 2051(c)(2)(A)(ii) that required OPM to cap the basic pay at the rate employees received prior to transfer in 2008. See Public Law 116–21, S. 1436 (2019). The 2019 provisions required OPM to begin treating the payments

made by the food service contractor as ''basic pay'' for purposes of retirement provisions.

For those reasons, OPM is issuing this proposed rule to ensure Public Law 110–279 and Public Law 116–21 are fully implemented. Additionally, it is correcting its oversight in not publishing regulations related to former House food services employees covered under FERS in accordance with Public Law 99–500.

Employee Deductions

As employees of a private contractor, House food services and Senate Restaurants employees are covered under Social Security. Therefore, for those employees covered under CSRS, retirement deductions for the Civil Service Retirement and Disability Fund are reduced so that the total contribution to the Old-Age, Survivors and Disability Insurance (OASDI) portion of Social Security and the Civil Service Retirement and Disability Fund does not exceed what affected individuals would be contributing as Congressional employees. For calendar year 2019, the employee deduction rate for CSRS Offset Congressional employees is 1.8 percent of basic pay. FERS-covered employees continue to have OASDI taxes as well as the FERS employee deduction for Congressional employees withheld from basic pay.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is not a ''significant regulatory action,'' under Executive Order 12866.

Reducing Regulation and Controlling Regulatory Costs

This rule is not an E.O. 13771 regulatory action because this rule is rule is not significant under E.O. 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects

5 CFR Part 831

Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.202 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart Q also issued under 5 U.S.C. 8336a; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. Law 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

■ 2. Amend § 831.202 by revising the section heading and paragraphs (a), (b)(1) and (3), and adding paragraphs (e) and (f) to read as follows:

§ 831.202 Continuation of coverage for food service employees of the House of Representatives and the Senate Restaurants.

(a) Congressional employees who were covered by the Civil Service Retirement System and provide food service operations for the House of Representatives or the Senate Restaurants can elect to continue their retirement coverage under subchapter III of chapter 83 of title 5, United States Code, when such food service operations are transferred to a private contractor. These regulations also apply to any successor contractors.

(b) * * *

(1)(i) Be a Congressional employee (as defined in section 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol, or

(ii) Be a Senate Restaurants employee who is an employee of the Architect of the Capitol on July 17, 2008;

* * * * *

(3) Elect to remain covered under civil service retirement provisions no later than the day before the date on which the food service operations transfer from the House of Representatives or the Senate Restaurants to a private contractor; and

* * * * *

(e) Beginning with annuity payments commencing on or after [EFFECTIVE DATE OF FINAL RULE], the rate of basic pay paid by a Contractor (defined by 2 U.S.C. 2051(a)(2)) to a covered former Senate Restaurants Employee (defined by 2 U.S.C. 2051(a)(1)) for any period of continuous service performed as an employee of the contract shall be deemed to be basic pay for purposes of 5 U.S.C. 8331(3) and (4).

(f) The agency contributions and employee deductions that must be paid in accordance with 5 U.S.C. 8423 and 2 U.S.C. 2051(c)(6)(A)(ii) for the period on or after June 12, 2019, until [EFFECTIVE DATE OF FINAL RULE] must be treated in accordance with § 831.111 of this title.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 842.110 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Pub. L. 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

Subpart A—Coverage

■ 4. Add § 842.110 to read as follows:

§ 842.110 Continuation of coverage for food service employees of the House of Representatives or the Senate Restaurants.

(a) *Election.* Congressional employees who were covered by FERS and provide food service operations for the House of Representatives or the Senate Restaurants can elect to continue their FERS retirement coverage when such food service operations are transferred to a private contractor. These regulations also apply to any successor contractors.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must:

(1)(i) Be a Congressional employee (as defined in sec. 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol; or

(ii) Be a Senate Restaurants employee who is an employee of the Architect of the Capitol on July 17, 2008;

(2) Be subject to FERS;

(3) Elect to remain covered under FERS retirement provisions no later than the day before the date on which the food service operations transfer from the House of Representatives or the Senate Restaurants to a private contractor; and

(4) Become employed to provide food services under contract without a break in service. A ''break in service'' means a separation from employment of at least three calendar days.

(c) *Employee deductions.* An employee who elects to continue coverage under FERS is deemed to consent to deductions from his or her basic pay for the Civil Service Retirement and Disability Fund in the amount determined in accordance with 5 U.S.C. 8422. The employer providing the food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The employer providing food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions under 5 U.S.C. 8423 that would be required if the individual were a Congressional employee covered by the Federal Employees Retirement System.

(e) *Basic pay of covered former Senate Restaurants Employees.* Beginning with annuity payments commencing on or after [EFFECTIVE DATE OF FINAL RULE], the rate of basic pay paid by a Contractor (defined by 2 U.S.C. 2051(a)(2)) to a covered former Senate Restaurants Employee (defined by 2 U.S.C. 2051(a)(1)) for any period of continuous service performed as an employee of the contract shall be deemed to be basic pay for purposes of 5 U.S.C. 8401(3)-(4).

(f) *Retroactive agency contributions and employee deductions related to covered former Senate Restaurants Employees.* The agency contributions and employee deductions that must be paid in accordance with 5 U.S.C. 8423 and 2 U.S.C. 2051(c)(6)(A)(ii) for the period on or after June 12, 2019, until [EFFECTIVE DATE OF FINAL RULE] must be treated in accordance with § 841.505 of this title.

[FR Doc. 2019–27915 Filed 1–3–20; 8:45 am]

BILLING CODE 6325–23–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1019; Product Identifier 2018–SW–011–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model AS332C,

AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This proposed AD would require, depending on helicopter configuration, installing skived polytetrafluoroethylene (PTFE) tape or removing skived PTFE tape and replacing the window seals. This proposed AD is prompted by a report of excessive friction between the window seal and the helicopter airframe. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 6, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1019; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic 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 service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2018–0039, dated February 9, 2018, and corrected on March 7, 2018, to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and EC 225 LP helicopters. EASA advises of an emergency exit window that required excessive pushing force to jettison. According to EASA, an investigation revealed the window seal was in good condition with no indication of paint contamination or of hardening. EASA advises that the root cause of the incident was excessive friction between the window seal and the airframe. EASA further advises that helicopters with VIP jettisonable cabin windows, which corresponds to Modification (MOD) 332P087140.00, with PTFE skived film (tape) installed, require greater force to jettison than standard jettisonable cabin windows with PTFE skived film installed due to the thickness of the VIP jettisonable cabin windows.

EASA states if this condition is not corrected, it could prevent the window from jettisoning, subsequently affecting the evacuation of passengers during an emergency situation. To address this unsafe condition, the EASA AD requires installing PTFE skived film on the window frames of helicopters with standard jettisonable cabin windows, and removing PTFE skived film and replacing polychloroprene seals with silicone seals on the window frames of helicopters with VIP jettisonable cabin windows.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS332–05.01.05 for Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters, and ASB No. EC225–05A046 for Model EC225LP helicopters, both Revision 1 and dated February 8, 2018. This service information applies to helicopters without VIP jettisonable cabin window MOD 332P087140.00 installed. This service information specifies applying PTFE skived film to the jettisonable cabin window frames.

The FAA also reviewed Airbus Helicopters ASB No. AS332–56.90.13 for Model AS332L2 helicopters, and ASB No. EC225–56C012 for Model EC225LP helicopters, both Revision 0 and dated February 2, 2018. This service information applies to helicopters with VIP jettisonable cabin window MOD 332P087140.00 installed. This service information specifies removing the PTFE skived film, if installed between the VIP cabin window frame and seal, from the VIP jettisonable cabin windows, and replacing the VIP jettisonable cabin window polychloroprene seals with silicone seals.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Information Notice No. 3012–I–05, Revision 0, dated March 8, 2016, for Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This service information provides additional information pertaining to the jettisonable cabin window system and the application of PTFE skived film to the jettisonable window frames. This service information also advises that VIP jettisonable cabin windows are thicker and stiffer than standard design windows and are slightly more difficult to jettison than standard jettisonable cabin windows.

Proposed AD Requirements

Within 110 hours time-in-service (TIS), and thereafter each time a jettisonable cabin window is installed:

- For helicopters without MOD 332P087140.00 installed, this proposed AD would require installing skived PTFE tape to each jettisonable cabin window frame.
- For helicopters with MOD 332P087140.00 installed, this proposed AD would require removing the skived PTFE tape, if installed, from each jettisonable cabin window, and replacing each VIP jettisonable cabin window polychloroprene seal with a silicone seal.

Differences Between This Proposed AD and the EASA AD

The EASA AD allows compliance within 250 hours TIS for helicopters that do not operate over water. This proposed AD would require compliance within 110 hours TIS for all helicopters, regardless of where they operate.

Costs of Compliance

The FAA estimates that this proposed AD affects 25 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Depending on your model helicopter and configuration:

- Installing skived PTFE tape would take about 8 work-hours and required materials would cost about $92, for an estimated cost of $772 per helicopter and $19,300 for the U.S. fleet.
- There are no costs of compliance with removing the skived PTFE tape and replacing the seals because there are no helicopters with a serial number identified by Airbus Helicopters with MOD 332P087140.00 installed on the U.S. Registry.

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.

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, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, 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.

The FAA prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2019–1019; Product Identifier 2018–SW–011–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive friction between the jettisonable cabin window and the airframe. This condition could result in the window failing to jettison, preventing occupants from exiting the helicopter during an emergency.

(c) Comments Due Date

The FAA must receive comments by March 6, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 110 hours time-in-service:

(1) For Model AS332C, AS332C1, AS332L, and AS332L1 helicopters; and Model AS332L2 and EC225LP helicopters without Modification (MOD) 332P087140.00 installed, install skived polytetrafluoroethylene (PTFE) tape to each jettisonable cabin window frame by following the Accomplishment Instructions, paragraph 3.B.2., of Airbus Helicopters Alert Service Bulletin (ASB) No. AS332–05.01.05 or ASB No. EC225–05A046, both Revision 1 and dated February 8, 2018, as applicable to your model helicopter.

(2) For Model AS332L2 and EC225LP helicopters with MOD 332P087140.00 installed:

Note 1 to paragraph (e)(2) of this AD: Airbus Helicopters has identified the following helicopters as having MOD 332P087140.00 installed: Model AS332L2 serial numbers (S/Ns) 2388, 2390, 2565, 2573, 2577, 2578, and 2587; and Model EC225LP S/Ns 2600, 2623, 2645, 2650, 2651, 2653, 2659, 2684, 2693, 2711, 2712, 2719, 2753, 2756, 2767, 2796, 2926, 2961, 2973, 2974, 2979, 3002, 3003, and 3012.

(i) Remove the skived PTFE tape, if installed between the VIP cabin window frame and seal, from each jettisonable cabin window by following the Accomplishment Instructions, paragraph 3.B.2., of Airbus Helicopters ASB No. AS332–56.90.13 (ASB AS332–56.90.13) or ASB No. EC225–56C012 (ASB EC225–56C012), both Revision 0 and dated February 8, 2018, as applicable to your model helicopter.

(ii) Replace each VIP jettisonable cabin window polychloroprene seal with a silicone seal by following the Accomplishment Instructions, paragraph 3.B.3., of ASB

AS332–56.90.13 or ASB EC225–56C012, as applicable to your model helicopter.

(3) After the effective date of this AD, do not install a jettisonable cabin window unless you comply with the requirements of paragraph (e)(1) or (e)(2) of this AD, as applicable to your model helicopter and configuration.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Airbus Helicopters Information Notice No. 3012–I–05, Revision 0, dated March 8, 2016, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2018–0039, dated February 9, 2018, and corrected on March 7, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5220, Emergency Exits.

Issued in Fort Worth, Texas, on December 27, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–28354 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 19–308; FCC 19–119; FRS 16321]

Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks comment on a number of proposals to modernize unbundling and resale obligations applicable to incumbent local exchange carriers (incumbent LECs) for local loops, dark fiber transport, and other types of network elements. The Commission also seeks comment on costs associated with specific unbundled network elements and resold services and on a transition period for all unbundling and resale relief that may be provided.

DATES: Comments are due on or February 5, 2020, and reply comments are due on or before March 6, 2020.

ADDRESSES: You may submit comments, identified by WC Docket No. 19–308, by any of the following methods:

• *Federal Communications Commission's website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1477, *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 19–308, adopted on November 22, 2019 and released on November 25, 2019. The full text of the document is available at *https://docs.fcc.gov/public/attachments/FCC-19-119A1.pdf.* The full text is also available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (*e.g.*, braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.*, accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

I. Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking* (NPRM), we propose to modernize our unbundling rules for local loops, dark fiber transport, and other types of network elements to reflect the vastly changed communications environment since the Commission last examined unbundling obligations through the impairment lens. These legacy obligations appear to no longer make any sense in many geographic areas due to vigorous competition for business data services, mass market broadband services, and numerous intermodal voice capabilities and services. In practice, these obligations appear to both discourage the deployment of next-generation

networks and unnecessarily burden incumbent LECs.

A. Modernizing Unbundling Obligations for Today's Communications Marketplace

2. Recognizing that the ''purpose of the Act is not to provide the widest possible unbundling,'' but ''to stimulate competition—preferably genuine, facilities-based competition,'' we seek comment on how best to modernize incumbent LECs' remaining unbundling obligations. While UNEs in some circumstances have provided a path for competitors to enter markets they might not otherwise be able to have economically justified entering, the Commission has long recognized that ''excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.'' Therefore, the Commission has never viewed the UNE obligations as being of infinite, or even indefinite, duration, particularly in light of Congress's inclusion in the 1996 Act of the means for the Commission to analyze the continued necessity of those requirements. Indeed, Congress specifically contemplated a future time when the continued need for section 251(c) unbundling obligations may be reevaluated. Today's marketplace is characterized by robust intermodal competition for voice and broadband services that may render many remaining unbundling obligations unnecessary or even actively harmful by impeding the deployment of and transition to more technologically advanced networks and services. Our proposals in this NPRM are informed by recent evidence demonstrating the availability of intermodal competition, as well as specific Commission findings based on comprehensive industry data that certain last mile loop and transport unbundling obligations are no longer necessary. We acknowledge, however, that there remains a digital divide between urban areas, which boast increasing numbers of intermodal broadband providers, and rural areas. Because UNEs may have continued benefits in providing broadband access to Americans in rural areas—where achieving scale is harder and thus competitive entry is harder—we propose to maintain existing unbundling of mass market broadband-capable loops in rural areas.

1. UNE Loops

3. Loops generally provide ''the last mile of a carrier's network that enables the end-user to originate and receive communications.'' Incumbent LECs are required to provide unbundled access to three general types of loop facilities: (1) DS1 and DS3 loops, (2) DS0 loops, and (3) the TDM-capabilities, features, and functionalities of hybrid copper/fiber loops. Incumbent LECs are also required to provide unbundled access to 64 kbps voice-grade channels over fiber loops to existing customers. Incumbent LECs must also provide unbundled access to UNE Analog Loops in non-price cap incumbent LEC service areas. In adopting loop unbundling requirements, the Commission clarified that all loop types may be used ''across a range of customer categories'' and that the UNE requirements apply equally to all classes served. At the same time, the Commission observed that the different types of loop facilities ''as a practical matter, typically serve distinct classes of customers, resulting in different economic considerations for competitive carriers seeking to self-deploy.'' We factor these observations and considerations, along with the ''reasonably efficient competitor'' aspect of the impairment standard, into our proposals below.

a. UNE DS1 and DS3 Loops

4. The Commission's rules require incumbent LECs to unbundle DS1 and DS3 loops, which are last-mile transmission facilities operating at a total digital signal speed of 1.544 Mbps and 44.736 Mbps, respectively. These loops, which are used primarily to serve enterprise customers, are not available as UNEs in all locations. Rather, the Commission limited the availability of UNE DS1 and DS3 Loops based on ''both a minimum number of business lines served by a wire center and the presence of a minimum number of fiber-based collocators,'' noting that ''[a] high concentration of business lines generally indicates a likely concentration of large, multi-story commercial buildings,'' which a reasonably efficient competitor could serve by building its own fiber-based facilities. Under our rules, the relevant thresholds for unbundling differ as to DS1 loops and DS3 loops. UNE DS1 Loops are only available ''to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators.'' UNE DS3 Loops are only available ''to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators.'' The Commission also capped the availability of unbundled DS1 and DS3 loops in a single building, recognizing that at certain thresholds of total bandwidth demanded at a particular location, it was feasible for competitive providers to self-provision and thus no impairment existed.

5. We propose to find no impairment with respect to UNE DS1 and DS3 Loops in (1) counties served by price cap incumbent LECs found to be competitive pursuant to the *BDS Order;* and (2) the study areas deemed competitive as a result of our decision to allow certain rate-of-return incumbent LECs to elect incentive regulation for their business data services, subject to a narrow residential carve-out described below. We do not include the ''Counties Deemed Grandfathered'' within our category of BDS competitive counties. We refer collectively herein to the BDS competitive counties and the competitive rate-of-return carrier study areas as the BDS Competitive Counties and Study Areas. We seek comment on this proposal.

6. Our proposal is based on the competitive findings in the *BDS Order* and the *RoR BDS Order.* In the *BDS Order,* based on the most extensive data collection that the Commission has ever undertaken, the Commission concluded that ''[t]o a large extent in the business data services market, the competition envisioned in the [1996 Act] has been realized.'' It explained that incumbent LECs ''once dominated'' the market by selling TDM-based DS1s and DS3s, but those services were being eclipsed by packet-based services sold by incumbent LECs, competitive LECs, cable providers, and other intermodal competitors. The Commission developed a competitive market test for price cap incumbent LECs' DS1 and DS3 services ''with the goal of promoting innovation and investment and recognizing recent trends and developments in the BDS marketplace'' and ''to determine which local markets are sufficiently competitive to warrant deregulation.'' The competitive market test deemed a price cap county competitive if either (1) 50% of the buildings in the county with BDS demand were within a half mile of a location served by competitive fiber, a distance at which the Commission found competitive providers actively competed for customers; or (2) 75% of census blocks within the county were served by cable with a minimum offering of 10/1 Mbps, suggesting that the cable provider had deployed sufficient capacity in its network to provide business data services. The Commission found that 91.1% of locations with business data services demand in price cap areas were deemed to be sufficiently competitive to eliminate ex ante pricing regulation for those services. It thus deemed 60% of

price cap counties competitive for purposes of DS1 and DS3 channel terminations and found the remaining 40% (largely in more rural areas) non-competitive. The Commission subsequently adopted a similar competitive market test for rate-of-return incumbent LECs that have elected incentive regulation based on rate-of-return incumbent LEC study areas. This test, based on the second prong of the *BDS Order*'s competitive market test, eliminated ex ante pricing regulation for DS1 and DS3 services in 16 rate-of-return study areas where cable providers offered 10/1 Mbps or higher speeds to at least 75% of census blocks. The Eighth Circuit affirmed the Commission's use of the competitive market test in the *BDS Order,* including the test's reliance on the competitive fiber facilities within a half mile and finding that cable services are ''increasingly functioning as substitutes for BDS.''

7. We believe the *BDS Order*'s findings eliminating ex ante pricing regulation of DS1 and DS3 business data services are applicable to the unbundling context. If we eliminate these specific UNEs in the BDS Competitive Counties and Study Areas, DS1 and DS3 services will remain available for purchase on a commercial basis as business data services. We understand that there are no material operational or performance distinctions between UNE DS1 and DS3 Loops and DS1 and DS3 business data services. The Commission has previously found that these two types of services are ''particularly close substitutes'' and thus are a part of the same competitive environment. Do commenters agree? Is there any meaningful difference between UNE DS1 and DS3 Loops and BDS DS1 and DS3 end user channel terminations or their terms of service, other than pricing? Even if there is such a difference, does unbundled access to UNE DS1 and DS3 Loops remain necessary in BDS Competitive Counties or Study Areas in the current communications marketplace with its extensive and increasing intermodal competition? In light of the increasing demand for higher-bandwidth and packet-based data services and the corresponding declining demand for DS1 and DS3 services, do DS1 and DS3 loops constitute reasonably efficient technology such that a reasonably efficient competitor would rely on them to compete for BDS customers?

8. Our proposal to find no impairment for DS1 and DS3 loops in BDS Competitive Counties and Study Areas is also based on our findings about the availability of competitive fiber in the *BDS Remand Order.* In that *Order,* we calculated that within BDS Competitive Counties, more than 94% of locations with BDS demand were served by incumbent LEC wire centers within a half mile of competitive fiber, and more than 97% of locations with BDS demand were either themselves within a half mile of competitive fiber or served by an incumbent LEC wire center within a half mile of competitive fiber. We reasoned that the data used in making those findings likely understated competition given that ''cable companies and other competitors frequently bypass ILEC networks entirely.'' Moreover, the data underlying our analysis was collected in 2013, and ''competitive fiber providers have continued to build new fiber routes in part to compete with incumbent LECs' BDS offerings.'' We thus propose to infer that the small fraction of enterprise locations not within a half mile of competitive fiber or served by an incumbent LEC wire center within a half mile of competitive fiber, *i.e.,* less than 3% of all enterprise locations in price cap incumbent LEC counties, would face the same non-impairment conditions for competitive providers. We seek comment on this reasoning.

9. In the *BDS Order,* the Commission found that the most appropriate geographic measure at which to determine the competitiveness of DS1 and DS3 end-user channel terminations was the county level, and we propose to use that same approach here. Do commenters agree? Is there any reason to base our analysis on a more granular geographic unit, *e.g.,* based on wire centers served by competitive fiber, or some other geographic area, rather than on counties? For example, should we find that UNE DS1 and DS3 Loops should remain available in portions of BDS Competitive Counties served by incumbent LEC wire centers more than a half mile from competitive fiber? Are there different considerations for UNE DS1 and DS3 Loops compared to business data services that would warrant some type of exemption?

10. *Proposed Exemption for Residential Broadband in Rural Areas.* We propose to narrowly exempt the availability of UNE DS1 Loops from any unbundling relief such that UNE DS1 Loops will remain available for residential broadband service along with telecommunications service in rural census blocks. Although UNE DS1 and DS3 Loops are used largely to serve enterprise customers, there is evidence in the record that some competitive LECs use UNE DS1 Loops to provision broadband to residential customers for whom no other broadband service is available and the distance is too great to provision such service using DS0s. The findings regarding DS1s and DS3s for the enterprise market may not translate cleanly to the rural, residential market. We seek comment on this view.

11. We believe this exemption would have benefits in maintaining access to mass market broadband in rural areas that outweigh any disincentives to next-generation network deployments by either incumbent or competitive LECs and seek comment on that view. We seek comment on the administrability of this proposed exemption. We believe that incumbent LECs should be able to readily accommodate this proposed exemption to our proposed finding of no impairment for enterprise use in BDS Competitive Counties and Study Areas. Do commenters agree?

12. If we do carve out an exemption related to residential use, should that exemption be limited to UNE DS1 Loops? We understand that DS3 loops are not generally used for residential consumers. Are there ever instances where UNE DS3 Loops are used to provide residential broadband services? If so, should a similar exemption be provided to serve mass market residential customers in rural census blocks within BDS Competitive Counties and Study Areas where UNE DS3 loops are no longer available for enterprise use?

13. *Alternatives.* As an alternative to our proposal to find non-impairment for DS1 and DS3 loops in BDS Competitive Counties and Study Areas, should we instead provide relief from unbundling requirements for DS1 and DS3 loops based on a forbearance analysis? Specifically, should we forbear from the unbundling requirements for DS1 and DS3 loops in the BDS Competitive Counties and Study Areas? We seek comment on this alternative proposal and whether the three prongs of the forbearance test would be satisfied. We believe the forbearance criteria are met for the same service areas where we propose to find non-impairment based on the same competitive findings and public interest determinations made in the *BDS Order* and the *RoR BDS Order.* Do commenters agree?

14. Or should we instead find that the market for UNE DS1 and DS3 Loops in the BDS Competitive Counties and Study Areas is ''sufficiently competitive without the use of unbundling?'' The Commission in the *Triennial Review Remand Order* made such a finding as to the long distance and mobile wireless markets and thus declined to require that UNEs be made available for the exclusive provision of these services. Do the competitive findings in the *BDS*

Order and the *RoR BDS Order* with respect to BDS services rise to the same level as the Commission's findings in the *Triennial Review Remand Order* as to the long distance and mobile wireless service markets? If so, are they sufficient to conclude that incumbent LECs should no longer be required to make DS1 and DS3 loops available on an unbundled basis in BDS Competitive Counties and Study Areas?

b. UNE DS0 Loops

15. The Commission's rules require incumbent LECs to make UNE DS0 Loops available nationwide. These broadband-capable loops are used primarily to serve mass market residential customers, in contrast to UNE DS1 and DS3 Loops. UNE DS0 Loops are typically used to provide both voice and broadband internet access service using various xDSL technologies. We also note that some competitive LECs use DS0s to provide Ethernet-over-copper and other higher-speed DSL service using bonded DS0s to certain business customers. Where UNE DS0 Loops remain available, competitive LECs may continue to use these loops for that purpose.

16. We propose to find that competitive LECs are no longer impaired without access to UNE DS0 Loops in urban census blocks. We base our proposal on the relatively low and falling barriers to entry that competitive providers face in providing broadband in urban areas, particularly using alternative technologies. We may rely on the availability of broadband in any forbearance or impairment analysis, consistent with Congress's mandate in section 706 that we ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'' While our rules require competitive LECs to use UNEs to provision telecommunications services, once they do so, they may use those same UNEs to provision information services, *i.e.,* broadband. By the same token, because facilities-based broadband can be used to provide the same residential services that can be provided with UNEs today, we rely on entry into, and current competition within, the broadband marketplace in considering whether impairment persists as to UNE DS0 Loops. Because facilities-based broadband service provides residential consumers similar (and typically more advanced) voice and internet access capabilities to those that can be provided with UNE DS0 Loops, we rely on evidence of entry into, and current competition within, the broadband marketplace in considering whether impairment persists as to UNE DS0 Loops in urban census blocks. Do commenters agree with this approach? We recognize that rural areas present different deployment considerations than urban areas and thus do not propose to include rural census blocks in our proposed non-impairment finding.

17. Our proposal to find that competitive LECs are no longer impaired in urban census blocks without access to UNE DS0 Loops relies on the presence of nearly ubiquitous cable deployment in urban areas. Cable providers make available facilities-based 25/3 Mbps internet access service, which meets the Commission's definition of advanced telecommunications capability, without the use of UNEs to 97% of households in urban census blocks. Furthermore, 74% of households in urban census blocks have at least two 25/3 Mbps providers, and 87% of households in urban census blocks have at least two 10/1 Mbps providers, generally the cable provider and the incumbent LEC, all without the use of UNEs. These figures exclude satellite providers and competitive LECs providing copper-based services. We assume any non-incumbent LEC provider offering copper-based services uses UNEs. We infer from this data that as cable continues to vigorously compete with other wireline ISPs, cable providers will build out to the remaining urban census blocks in the near future and similarly, competing facilities-based wireline providers will upgrade their networks to better compete with cable. We seek comment on this analysis.

18. Our proposal also relies on recent evidence demonstrating that increasing numbers of competitors using wireless technologies are entering the residential market for broadband services in urban areas without the use of UNEs. For example, Verizon has announced plans to deploy 5G-based fixed wireless service in 30 geographic markets, mostly outside its incumbent LEC territory, Starry is deploying fixed wireless service in major urban centers, and other WISPs are specifically targeting urban customers as well. AT&T's CEO recently told investors that over the next three to five years, ''unequivocally 5G will serve as a . . . fixed broadband replacement product.'' These developments are consistent with the observations in the *2018 Communications Marketplace Report,* where the Commission noted that advancements in fixed wireless service technology will produce speeds that will ultimately rival what can be offered by fiber. Indeed, even certain parties opposing USTelecom's recent request for forbearance noted that 5G ''is ideally suited for urban areas with high building density.'' Relatedly, the Commission has long recognized that the costs for new deployment are significantly lower in urban areas. Indeed, one of the key assumptions of the Commission's Connect America Fund model, which determines how scarce universal service funds are allocated for high-cost areas, is that broadband deployment costs less in urban areas than in rural areas. The Commission has also acted to lower barriers to entry and thereby spur further intermodal competition by opening additional spectrum for licensed and unlicensed uses, streamlining the process of small cell siting, and modernizing pole attachment rules to reduce the cost and time it takes to string fiber on poles. We propose to find on the basis of these factors taken together that entry barriers have been reduced and, in many areas, eliminated so significantly that a reasonably efficient competitor is no longer impaired without access to UNE DS0 Loops in urban census blocks and that unbundling of DS0 loops in such areas is no longer warranted. We seek comment on this proposal. Do commenters agree that the increasing wireless broadband deployment and entry in urban areas constitute evidence that a reasonably efficient competitor using reasonably efficient technologies is not impaired without access to these UNEs?

19. In these urban areas where advanced services are available to consumers from providers that do not rely on UNE DS0 Loops, we believe a continued DS0 unbundling requirement will artificially and unnecessarily slow the consumer transition away from services provided over legacy copper loops to more advanced networks and services. We therefore believe that eliminating DS0 unbundling in urban areas would better advance the 1996 Act's goal of broadband deployment. Furthermore, new entrants using fixed wireless and other technologies may specifically target the relatively few urban areas with only one 25/3 Mbps provider as offering the most economically-feasible case for entry, because of the density and relative lack of competition in these areas, particularly if UNE DS0 Loops are no longer available. We seek comment on these views.

20. We believe basing a finding of non-impairment at the urban census block level would be administratively workable to implement as both incumbent and competitive LECs are familiar with census block metrics as a

result of the Commission's Form 477 broadband deployment reporting obligations, and urban versus rural census blocks are identifiable based on the Census Bureau's publicly available designations. Do commenters agree? If basing a non-impairment finding on census blocks would raise administrative difficulties, how might we ease or address them? Urban census blocks may be located either in urbanized areas or urban clusters.

21. In proposing relief for UNE DS0 Loops, we do not propose to distinguish between residential and enterprise services. We note that within price cap counties that have been deemed competitive by the *BDS Order* for business data services, including DS1 services, 95% of census blocks with business demand had at least one competitive provider. Based on the present record, we do not foresee a need that would justify different treatment for UNE DS0 Loops based on their use. We seek comment on this view.

22. Competitive LECs stated that they use broadband-capable UNE DS0 Loops to create new services not provided by incumbent LECs by bonding multiple loops and/or placing their own electronics on them to provide high-speed broadband and voice service to their customers. Competitive LECs also commented that they use these loops as bridges to deployment of next-generation networks, and asserted that no meaningful alternatives for consumers exist for these loops. Incumbent LECs asserted that they are developing or have already developed broadband alternatives that may not have existed when the competitive LEC first entered those areas. We seek comment on these competing assertions. Are there *urban* census blocks where incumbent LECs currently only provide legacy, or no, DSL service and where a competitive LEC supplies high-speed broadband over UNE DS0 Loops? If so, where? And would granting relief promote or deter additional investment in high-speed facilities in such areas?

23. Some competitive LECs have contended that customer preference for TDM-based and line-powered services supports maintaining unbundling requirements, while incumbent LECs have argued that such preferences are irrelevant to an analysis of whether to forbear from the UNE regime. We concluded for purposes of our forbearance analysis in the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order* that ''we [ ] are not persuaded that the Commission must 'protect' every preference some customers might have, especially in the face of alternative options for obtaining voice services.'' Do different considerations apply here? Should an impairment analysis consider the extent to which our unbundling requirements may artificially protect users of legacy technologies from market forces that would otherwise provide price signals encouraging the transition to next-generation technologies?

24. Does evidence that incumbent LECs offered UNE-platform (UNE–P) replacement products when the UNE–P obligation was eliminated support incumbent LEC suggestions that they intend to offer UNE DS0 Loop replacement products on a commercially negotiated basis? How, if at all, should such a possibility factor into an impairment or forbearance analysis?

25. Our current copper retirement rules permit incumbent LECs to obtain relief from the unbundling requirements for DS0 loops by deploying fiber or other next-generation networks and then retiring their copper facilities pursuant to our network change disclosure rules. Incumbent LECs may retire their copper facilities without the need to seek our authorization. We seek comment on whether the availability of this option has any bearing on the need for unbundling relief. What impact, if any, does an incumbent LEC's ability to achieve relief equivalent to forbearance have on competitive LEC incentives to deploy their own facilities as expeditiously as possible? If an incumbent LEC continues to maintain its copper facilities even after it has deployed last-mile fiber, should those copper facilities remain available to competitors via unbundling for the types of services customers nevertheless continue to demand?

26. In forbearing from the UNE Analog Loop obligation, we noted ''the disincentive that continued unbundling mandates create for competitors to invest in their own facilities-based networks and transition their customers to next-generation services.'' Is there any reason to believe that different considerations apply with respect to UNE DS0 Loops? Does the economic cost of maintaining a DS0 unbundling requirement outweigh any benefit of allowing customers to continue relying on legacy services?

27. *Alternatives.* As an alternative to finding no impairment for DS0 loops in urban census blocks, should we forbear from DS0 loop unbundling requirements in urban census blocks with a minimum of 25/3 Mbps fixed service provided by at least two facilities-based, terrestrial providers without the use of UNEs? We seek comment on this alternative and the three prongs of the forbearance test. Is the Commission's conclusion in the *Restoring Internet Freedom Order* that the presence of two wireline internet service providers ''can be expected to produce more efficient outcomes than any regulated alternative'' relevant to our consideration in this context? If we were to use this alternative test, would a census block-by-census block forbearance decision be administrable from the standpoint of the Commission and affected LECs? Or should we aggregate up our analysis to a larger unit of measurement, such as counties?

28. For purposes of such a test, we would expect to include fixed wireless providers, but note that fixed wireless penetration rates are low in our most recent publicly available Form 477 data. Nonetheless, recent developments in fixed wireless services have lowered the barriers to entry by fixed wireless providers, and provided them with the means of bringing effective competition to urban areas. We seek comment on this analysis. Does the presence of fixed wireless providers in a census block mean that barriers to entry are low (suggesting no impairment of entry) or that competition is thriving (suggesting forbearance is appropriate)?

29. In the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order,* we concluded that ''price cap LEC UNE Analog Loop obligations are unnecessary to ensure that the charges for voice services are just and reasonable.'' Do different considerations apply for UNE DS0 Loops given their use for provisioning broadband service in addition to voice service?

c. UNE Narrowband Voice-Grade Loops

30. Under our rules, incumbent LECs must provide three specific types of unbundled narrowband voice-grade loops: UNE Analog Loops, 64 kbps voice-grade channels over last-mile fiber loops when an incumbent LEC retires copper, and the TDM capabilities of hybrid loops. The Commission forbore from new 64 kbps unbundling obligations in 2015 but grandfathered existing users. Voice-grade loops are used almost exclusively for the provision of voice-grade service, which we have found customers are migrating away from in favor of IP- and wireless-based voice services provided by multiple intermodal providers. These include facilities-based fixed voice providers such as cable companies providing VoIP, mobile wireless facilities-based providers and resellers, and VoIP providers offering over-the-top services via broadband.

31. We propose to eliminate these unbundling obligations nationwide as competitors do not face significant

barriers to entering the voice-service marketplace. Indeed, incumbent LECs provided only about 12% of voice subscriptions in 2017. As we have previously found, rather than a foothold for new entrants into the marketplace, these legacy regulatory obligations have become a vice, ''trapping incumbent LECs into preserving outdated technologies and services at the cost of a slower transition to next-generation networks and services that benefit American consumers and businesses.'' We seek comment on our specific proposals for each of the three types of narrowband voice-grade copper loops described below.

32. In the alternative, should we instead find simply that the marketplace for voice-grade loops is ''sufficiently competitive without the use of unbundling'' as the Commission previously did for long-distance and mobile services? The Commission declined to require that UNEs be made available for the exclusive provision of long distance and mobile wireless services based upon a finding that the marketplace for those services was competitive without reliance on UNEs. Does the degree of intermodal competition in today's voice marketplace support finding that incumbent LECs should no longer be required to make UNEs available for the exclusive provision of voice services?

33. *UNE Analog Loops.* We propose to extend the forbearance for UNE Analog Loops to all remaining service areas where this unbundling obligation still applies. In the recent USTelecom forbearance proceeding, we granted relief from unbundling requirements for UNE Analog Loops to price cap incumbent LECs in their service areas. We propose extending this forbearance relief nationwide for the same reasons we stated in the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order,* including the extensive intermodal competition present in the voice marketplace, the harmful marketplace distortions generated by outdated regulations, and the reduced incentives for both incumbent and competitive LECs to invest in their own facilities and to transition to next-generation networks. We seek comment on this proposal.

34. Do the considerations in non-price cap areas differ from those in price cap areas with respect to these UNEs that can only be used to provision voice-grade service? Are any competitors purchasing these UNEs to provide voice services in non-price cap areas where other voice alternatives do not exist? Commenters should provide specific detail whether: (1) Continued UNE Analog Loop requirements in non-price cap areas remain necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) continued UNE Analog Loop requirements are necessary for the protection of consumers; and (3) forbearance from UNE Analog Loop requirements is consistent with the public interest.

35. Alternatively, should we find that competitors nationwide are no longer impaired without access to UNE Analog Loops in the face of the breadth of voice alternatives we described in the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order*? Our conclusions in that *Order* were based on Form 477 data, which is collected on a nationwide basis. Nevertheless, should we limit a non-impairment finding only to price cap areas where we have previously forborne? If so, what is the basis for such a limitation? We also seek comment on whether competitors in non-price cap areas remain impaired without access to these voice-grade only UNEs. Are there special or different circumstances we should consider for evaluating impairment in non-price cap incumbent LEC areas?

36. *Grandfathered 64 kbps Fiber Loops.* We propose to eliminate the requirement that competitive LECs continue to receive unbundled access to the previously grandfathered 64 kbps voice channels over fiber loops. We propose to reach this outcome whether evaluated under the impairment standard of section 251, the forbearance criteria of section 10, the general standards governing Commission action under provisions such as sections 4, 201(b), and 303(r), or any combination thereof. We seek comment on this proposal. The Commission forbore from this requirement on a nationwide basis for all incumbent LECs in 2015, finding this unbundling burden on fiber deployment to be disproportionate to the ''very limited'' and decreasingly relevant purpose the requirement serves—to protect narrowband voice competition as networks transition from copper to fiber. At the same time, the Commission grandfathered the obligation as to existing UNE 64 kbps voice channels over fiber loops.

37. We propose to eliminate this grandfathered UNE 64 kbps voice channel obligation for two reasons. First, we believe it potentially delays the TDM-to-IP transition by locking incumbent LECs subject to the grandfathering provision into continuing to provide TDM service where they have upgraded their networks to fiber and advanced services are available. Second, we believe the continued cost to incumbent LECs of maintaining the legacy equipment and systems necessary to continue to support this obligation solely to protect narrowband legacy voice is no longer necessary in light of our prior findings about the state of the voice services marketplace. We seek comment on these views. Specifically, we seek comment on the effect the grandfathering requirement continues to have on incumbent and competitive LEC incentives to deploy next-generation networks and to transition customers to next-generation services that are available over such networks. In light of intermodal voice alternatives, would a reasonably efficient competitor deploy a narrowband network to provide voice service today?

38. To the extent competitors still rely on the grandfathered 64 kbps voice channel over fiber loops, we seek comment on whether such competitors remain impaired without access to this grandfathered requirement, and whether the three-part forbearance standard would be met for the same reasons they are met with respect to our UNE Analog Loop forbearance in price cap incumbent LEC service areas. We believe that the respective costs already incurred by both incumbent and competitive LECs with respect to this grandfathered requirement is outweighed by the costs of continuing to obligate incumbent LECs to maintain and support this legacy equipment and service, and the societal costs that retaining this grandfathered unbundling obligation has on the transition to IP-based networks and services. We seek comment on this belief, including what role it should play in our analysis. What benefits would be gained by eliminating this obligation? Would competitive LECs or consumers be harmed by eliminating their access to the grandfathered 64 kbps voice channel? Do any competitive LECs still use the grandfathered 64 kbps voice channel?

39. *TDM Capabilities of Hybrid Loops.* Hybrid loops are local loops ''composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.'' In the *Triennial Review Order,* the Commission declined to order unbundling of the packet-based capabilities of hybrid loops. Our rules currently require that incumbent LECs unbundle either (1) a TDM voice-grade capable 64 kbps channel or (2) a spare copper loop if the requesting carrier seeks to provide narrowband services, and only the TDM features, functions, and capabilities of hybrid loops if the

requesting carrier seeks to provision broadband services.

40. For the same reasons we forbore from the UNE Analog Loop requirement in price cap incumbent LEC areas, we do not believe that UNE Hybrid Loops continue to be necessary for the provision of narrowband voice service. We thus propose granting nationwide forbearance from UNE Hybrid Loop requirements. We seek comment on this proposal. Are there circumstances specific to these hybrid loops that differ from UNE Analog Loops such that these unbundling requirements remain necessary for provisioning voice service? Commenters should provide specific detail why: (1) Continued UNE Hybrid Loop requirements are necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) continued UNE Hybrid Loop requirements are necessary for the protection of consumers; and (3) forbearance from UNE Hybrid Loop requirements is consistent with the public interest. Do any competitive LECs today use the unbundled TDM capabilities of hybrid loops to provision any broadband services?

41. We note that no commenter has claimed to use the TDM capabilities of hybrid loops to provide broadband service. Is that correct? To the extent that any hybrid loops are currently being used to provide TDM-based broadband services, would nationwide relief for hybrid loop unbundling requirements better promote the transition to next-generation networks, including the replacement of the remaining copper in hybrid loops with fiber? Do incumbent LECs have hybrid loops in rural census blocks such that nationwide elimination of these UNEs would eliminate consumer access to broadband in those areas? If so, should we consider providing more limited geographic relief, such as only in urban census blocks, consistent with our proposals for UNE DS0 Loops above?

42. Alternatively, we seek comment on whether we should find that competitors are no longer impaired without unbundled access to the TDM-capabilities, features, and functionalities of hybrid loops. In the 2003 *Triennial Review Order,* the Commission concluded that competitors were impaired on a nationwide basis without access to these UNEs for serving mass market customers. The Commission went on to note, however, that this impairment would diminish over time as more and more fiber is deployed. Has sufficient fiber been deployed in the sixteen years since the *Triennial Review Order* such that competitors are no longer impaired without access to UNE Hybrid Loops for the purpose of serving mass market residential customers? In today's marketplace, would a reasonably efficient competitor using reasonably efficient technology seek to provide voice service using the TDM capabilities of hybrid loops? Would a reasonably efficient competitor using reasonably efficient technology seek to provide broadband service using the TDM capabilities of hybrid loops? Recognizing that hybrid loops are an important step in the deployment of fiber to the home, does any continued unbundling obligation with respect to these loops, either for broadband or narrowband services, threaten to frustrate deployment of and transition to next-generation networks and services? Commenters should specify whether any impairment or non-impairment faced by competitors occurs on a nationwide basis or only in certain geographic areas. Commenters should also provide data to support their contentions.

d. Subloops

43. Subloops are portions of a loop or ''smaller included segment[s] of an incumbent LEC's local loop plant.'' Subloops are generally ordered with the intention of taking ''the competitor all the way to the customer.'' Our rules impose UNE obligations for two types of subloops—copper and multiunit premises subloops. Subloop unbundling obligations only apply to incumbent LECs' distribution loop plant. The Copper UNE Subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant and the end-user customer premises. The Copper UNE Subloop includes inside wire owned or controlled by the incumbent LEC and the features, functions, and capabilities of the copper loop. Incumbent LECs must provide competitive LECs unbundled access to Copper UNE Subloops for the provision of narrowband and broadband services.

44. The Commission's rules separately address Multiunit Premises UNE Subloops due to previously-found specific ''impairments associated with facilities-based entry in multiunit buildings or campus environments.'' Incumbent LECs must offer unbundled access to these subloops necessary to access wiring at or near a multiunit customer premises, *i.e.,* all incumbent LEC loop plant between the minimum point of entry at a multiunit premises and the point of demarcation. Unlike Copper UNE Subloops, the Multiunit Premises UNE Subloop includes the entirety of the loop plant regardless of the capacity level or type of loop the requesting carrier will provision to its customer, that is, including fiber or hybrid loops. Some competitive LECs state that they use Multiunit Premises UNE Subloops to ''access loops otherwise unavailable because of fiber feeder.'' The Multiunit Premises UNE Subloop also includes any inside wiring owned and controlled by the incumbent LEC.

45. We propose to forbear or find no impairment with respect to UNE Subloops in the particular instances or geographic areas where we propose to eliminate the underlying loop to the customer's premises, either by forbearance or finding no impairment. We seek comment on this proposal. We base our proposal on the same factors and reasoning upon which we propose relief applicable to each of the underlying Copper UNE Loops discussed above. We do not believe the public interest would be served by maintaining Copper UNE Subloops in areas where the end-to-end UNE Loop obligations have been eliminated. We seek comment on this view.

46. We believe competitive LECs' ability to serve their current customer base with their own facilities-based network will be unaffected if we eliminate Copper UNE Subloop obligations, noting that incumbent LECs indicate that they sell a negligible number of Copper UNE Subloops. Do commenters agree? If not, commenters should specify which types of services, customers, and geographic areas they believe our Copper UNE Subloop unbundling proposal would impact. If these unbundled subloops are eliminated, will incumbent LECs still provide competitive LECs access to subloops on a commercial basis to the extent such access is sought? Are there alternatives for competitive LECs to reach their end-user customers if we eliminate Copper UNE Subloop obligations? We also believe that eliminating Copper UNE Subloops in the same instances where we propose to eliminate the underlying UNE Loop obligation will be administratively feasible. Do commenters agree? If not, how might we ease any administrative difficulties?

47. We seek more specific comment on the Multiunit Premises UNE Subloop. We note that these particular unbundling obligations largely came about to address issues related to facilities-based competitors accessing the customer's location where access to

the premises was controlled or managed by someone other than the customer. Should we treat the Multiunit Premises UNE Subloop differently from the Copper UNE Subloop? Competitive LECs assert that special barriers still exist to accessing multiunit premises. Are they correct, and if so, do such barriers justify retaining unbundled access to subloops for multiunit premises wiring? Are these barriers independent of accessing the Multiunit Premises UNE Subloop, such that retaining this unbundled element would still not enable competitive LECs to access customers in such premises? Are there alternatives to Multiunit Premises UNE Subloops to access multiunit premises? Do the Commission's rules prohibiting LECs from entering into exclusive access contracts with the owners of residential and commercial multi-tenant environments make unbundled access to these subloops unnecessary? We seek comment on any issues we should consider in evaluating the extent to which Multiunit Premises UNE Subloops should remain available on an unbundled basis to best further the objectives of the Act.

2. UNE Dark Fiber Transport

48. Dark fiber transport is deployed fiber optic cable between incumbent LEC wire centers that has not been ''lit'' through the addition of optronic equipment that would make it capable of carrying telecommunications. This dark fiber facility is typically referred to as ''interoffice dark fiber.'' The Commission's transport unbundling rules define when an incumbent LEC is required to unbundle its interoffice dark fiber and make it available to a requesting carrier. Where so obligated, the incumbent LEC must lease its unlit fiber, subject to availability, enabling the competitive LEC to use such dark fiber as if it were part of its own fiber network. Thus, after deploying its own electronics to light the dark fiber, the competitive LEC is able to provision service to end users served from the wire center to which the unbundled dark fiber transport terminates.

49. In the *Triennial Review Remand Order,* the Commission applied the impairment standard to limit the extent to which incumbent LECs are required to provide UNE Dark Fiber Transport. The Commission concluded that competitive LECs are not impaired without access to UNE Dark Fiber Transport when both wire centers are classified as either Tier 1 or Tier 2, reasoning that on such routes, ''a reasonably efficient competitor has, or could, duplicate the facilities of the incumbent LEC.'' For purposes of UNE Dark Fiber Transport, a Tier 1 wire center has at least four fiber-based collocators or at least 38,000 business lines, or both. A Tier 2 wire center is one that does not qualify as Tier 1 but has at least three fiber-based collocators or at least 24,000 business lines, or both. All other wire centers are Tier 3. As a result, all UNE Dark Fiber Transport that is leased today involves at least one Tier 3 wire center end point. Tier 3 wire centers are all wire centers that are not classified as Tier 1 or Tier 2 wire centers. The Commission has described Tier 3 wire centers as those that ''show a generally low likelihood of supporting actual or potential competitive transport deployment.'' We refer to these Tier 3 wire centers as ''UNE triggering'' wire centers.

50. In the recent *UNE Transport Forbearance Order,* we unanimously forbore from UNE DS1/DS3 Transport obligations for price cap incumbent LECs at wire centers within a half mile of competitive fiber. We concluded that the presence of nearby competitive fiber creates a sufficiently dynamic marketplace as to protect competition and consumers as well as further the public interest, and forbearance was therefore warranted.

51. Consistent with the analysis in the *UNE Transport Forbearance Order,* we propose finding that competitive LECs are not impaired without access to unbundled dark fiber transport to wire centers that are within a half mile of alternative fiber. The wire centers that we propose would no longer be subject to UNE Dark Fiber Transport obligations are those for which the Commission granted forbearance from UNE DS1/DS3 Transport obligations in the *UNE Transport Forbearance Order.* We seek comment on this proposal. Our proposal is based on concluding that a reasonably efficient competitor within a half mile of alternative fiber would not be impaired without access to UNE Dark Fiber Transport because it should be able to obtain such transport, if available, on a commercial basis at competitive rates, or by building its own transport network. In the *BDS Order,* the Commission assumed that the presence of a second wireline provider, in addition to the incumbent LEC, is sufficient to discipline prices for transport in areas with high fixed costs. We affirmed this finding in the *BDS Remand Order.* We infer that this same assumption would apply with respect to dark fiber assuming both the incumbent LEC and the second provider having the nearby competitive fiber network each have dark fiber available for lease. Is this assumption reasonable? Our proposal is also informed by the Commission's observation in the *Triennial Review Remand Order* that ''competing carriers that use UNE Dark Fiber transport actively seek out wholesale alternatives to the incumbent LEC's fiber facilities.'' Does this observation still hold?

52. Our forbearance analysis in the *UNE Transport Forbearance Order* relied on the proximity of a price cap incumbent LEC wire center to competitive lit fiber. Commenters in that proceeding claimed that lit fiber is no commercial substitute for dark fiber. However, we do not propose to consider the substitutability of lit and dark fiber to be relevant in an impairment analysis. While the Commission has previously differentiated lit from dark fiber, that has no bearing on the fact that the existence of a nearby fiber network suggests the ability of a reasonably efficient competitor to self-provision its own fiber network in competition with the incumbent LEC, regardless of whether that network owner offers lit fiber services or dark fiber facilities. We seek comment on whether our conclusion that the existence of a nearby competitive fiber network within a half mile necessarily implies an ability of at least one reasonably efficient competitor having the ability to deploy its own fiber such that we can reasonably infer no impairment for other competitors.

53. We also seek comment on whether we should supplement the list of incumbent LEC wire centers for which we propose to find non-impairment for UNE Dark Fiber Transport by adding any Tier 3 wire centers that are within a half mile—or potentially some longer distance—of Tier 1 or Tier 2 wire centers. Could we infer no impairment as to these wire centers, due to the proximity of either fiber-based competitors or business line density at the nearby Tier 1 and Tier 2 wire centers? We note that in the *BDS Order,* the Commission observed that competitive providers sometimes build ''more circuitous route[s] in anticipation of additional demand'' than the existing incumbent LEC's route between wire centers. Moreover, we are cognizant of the *USTA II* court's discussion of how we must consider ''facilities deployment along similar routes when assessing impairment.'' Should we consider this as a separate stand-alone proposal for unbundling relief from UNE Dark Fiber Transport obligations? We observe that some wire centers that are classified as Tier 3 facilities are apparently located in urban areas, which would suggest similar business line density and the likely presence of nearby Tier 1 or Tier 2 wire centers. If we were to undertake

a one-time analysis to supplement the list based on existing Tier 3 wire centers, we do not believe this would be administratively difficult. Do commenters agree? Could we rely on the wire center locations as set forth in the Local Exchange Routing Guide to determine the necessary geocoordinates to conduct such an analysis? Are there other publicly available sources that would provide better wire center location information? We ask commenters to generally comment on any administrative burdens associated with wire centers for the purposes of this supplemental proposal.

54. Are there other alternative criteria upon which we should base an impairment analysis? For example, should we find that competitive LECs are not impaired without access to UNE Dark Fiber Transport at Tier 3 wire centers where some threshold percentage of end users served by the wire center has access to at least two facilities-based providers at 25/3 Mbps without the use of UNEs? If so, should we exclude satellite and mobile service providers from counting as a facilities-based provider for this test? We would consider fixed wireless to the extent we do in our other residential competitive tests, as discussed above. Should we conclude that a reasonably efficient competitor that serves such end users could secure its own transport services without the benefit of UNE Dark Fiber Transport because at least one other non-incumbent LEC facilities-based provider has been able to serve end users without access to UNE Dark Fiber Transport? Are there advantages and disadvantages to using this test? Is it reasonable to infer that a confirmed 25/3 Mbps end user in a service area indicates the existence of transport alternatives to support a finding of non-impairment? What would be the appropriate number of, or percentage of, subscribers served by an individual wire center for us to make this determination? Should we aggregate subscribers at multiple wire centers in a geographic area? Is it necessary for the Commission to identify all Tier 3 wire centers ex ante, before concluding whether a finding of non-impairment is appropriate, and, if so, through what public sources would the Commission be able to create a comprehensive list of such wire centers?

55. Or, should we extend forbearance to UNE Dark Fiber Transport obligations for the same wire centers subject to our UNE DS1/DS3 Transport forbearance? What factors would differ in considering forbearance for unbundled dark fiber transport from forbearance for lit unbundled transport? In its 2018 forbearance petition, USTelecom initially sought nationwide forbearance relief from all transport unbundling obligations, including UNE Dark Fiber Transport. Before USTelecom withdrew its request for forbearance from UNE Dark Fiber Transport obligations, commenters provided sharply contrasting views as to whether the forbearance standard could be met for granting such relief.

56. Incumbent LECs generally disputed the relevance of UNE Dark Fiber Transport in today's marketplace, pointing to how few such UNEs are leased from the largest incumbent providers. Verizon, for example, claimed that it both buys a *de minimis* amount of UNE Dark Fiber Transport and sells very small volumes. USTelecom described competitive LECs' use of UNE Dark Fiber Transport as playing a ''negligible role in the marketplace.'' Moreover, USTelecom observed that the four largest incumbent LECs leased only 20,000 to 60,000 combined UNE Dark Fiber Transport miles to competitive LECs, compared to nearly 12 million dark fiber transport miles that were made available via commercial leasing. Incumbent LECs also dispute that UNE Dark Fiber Transport is primarily used by competitive LECs to reach end users in rural areas. For those competitive LECs that rely on UNE Dark Fiber Transport to provision service to a substantial number of end users, CenturyLink reasoned that such demand would justify deployment of its own facilities.

57. Competitive LECs, on the other hand, argued that access to UNE Dark Fiber Transport was essential to the provision of new service, often in rural markets. For example, one competitive LEC described its network buildout strategy, which first requires collocation in the incumbent LEC's central office followed by connection to its existing facilities-based network using UNE Dark Fiber Transport. This competitive LEC emphasized that its use of UNE Dark Fiber Transport required investment in collocation and optronics to operationalize the leased UNE Dark Fiber Transport. Other commenters contended that competitive LECs use UNE Dark Fiber Transport as ''the critical middle-mile fiber to connect to their own last-mile facilities.'' We seek comment generally on all of these assertions and the potential application of section 10 forbearance criteria to UNE Dark Fiber Transport.

3. Other UNEs

a. Network Interface Devices

58. The network interface device, or NID, which is always located at the customer's premises, is defined as any means of interconnecting the incumbent LEC's distribution plant to wiring at a customer premises location. Apart from its obligation to provide the NID functionality as part of an unbundled loop or subloop, an incumbent LEC must also offer nondiscriminatory access to the NID on an unbundled, stand-alone basis to requesting carriers for the purpose of connecting the competitor's own loop facilities. Forbearance from this obligation would necessarily coincide with and follow our forbearance proposals related to loops and subloops and previous forbearance grants related to loops. An incumbent LEC must permit a requesting carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's NID. The NID is a terminal endpoint for loops. The need for unbundled access to an incumbent LEC's NID arose to address scenarios, typically in multiunit locations, where access to the inside wire on the premises was controlled by a premises owner that did not want additional NIDs installed on their premises, or a customer had no need for a duplicate NID.

59. Based on the record developed in the USTelecom forbearance proceeding, we propose to forbear from the UNE NID obligation because it appears that stand-alone NIDs are not necessary for competitive LECs to access potential customers. Competitive and incumbent LECs have described substantially changed circumstances in the last two-plus decades such that this network element may no longer serve any meaningful purpose. Competitive carriers are on record stating that ''[a]s a practical matter, [they] do not purchase network interface device elements separate from unbundled loops.'' AT&T is also on record stating it sells no UNE NIDs. We seek comment on our view that the lack of stand-alone UNE NIDs indicates that the obligation is not necessary to ensure just and reasonable rates and to protect consumers, thus justifying forbearance.

60. How often do competitive carriers use this UNE obligation to have access to stand-alone NIDs? How many stand-alone NIDs are currently purchased from incumbent LECs? Are there still cases where customer premises wire is not part of the incumbent LEC's network, *i.e.,* not an inside wire subloop, and the NID is the sole means of accessing this customer premise's

wire? If we eliminate UNE loop and subloop obligations, would competitive providers need to acquire access to NIDs on a stand-alone basis, and if so, are there competitive alternatives to this network element? In the absence of an unbundling obligation, would incumbent LECs still provide access to NIDs? As an alternative to forbearing from this requirement, should we instead find that competitive LECs are not impaired without access to NIDs? If so, on what basis could we make a finding of no impairment?

b. Operations Support Systems

61. Incumbent LECs must offer nondiscriminatory access to their operations support systems, or OSS, for qualifying services on an unbundled basis. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The Commission previously found that the UNE OSS ''requirement includes an ongoing obligation on the incumbent LECs to make modifications to existing OSS as necessary to offer competitive carriers nondiscriminatory access and to ensure that the incumbent LEC complies with all of its network element, resale and interconnection obligations in a nondiscriminatory manner.'' OSS is used for the provision of other UNEs, and it is also a separate stand-alone UNE that is used for interconnection and other purposes, including number porting. The Commission required incumbent LECs to provide OSS on an unbundled basis in the *Triennial Review Order* because it found that ''these functions are essential for carriers to serve mass market and enterprise customers'' and competitive LECs providing these services are ''impaired on a national basis without access to OSS.''

62. We propose to forbear from the standalone OSS unbundling obligation—*i.e.,* when used for purposes other than managing other UNEs—because we believe its very limited use in today's marketplace is evidence that this standalone UNE is not necessary to ensure either just and reasonable rates or consumer protection and forbearance would be consistent with the public interest. We seek comment on this proposal. CenturyLink asserts that ''OSS are naturally coupled to the availability of the UNEs they support.'' Does access to this UNE remain necessary to facilitate deployment of competitive carrier networks? How does this UNE obligation differ from other UNE obligations, and should it be treated differently than UNE loop and transport obligations, which may require more intrusive sharing of incumbent LEC networks?

63. If we were to eliminate the UNE OSS obligation, are there any alternative OSS providers on which competitive LECs could rely, to the extent they need to do so? We seek comment on the assertions by TPx and Socket that they rely on UNE OSS to serve their non-UNE based customers. We also seek comment on whether OSS as a UNE is necessary for competitive LECs and other providers subject to number porting obligations. Is there a more efficient way to provide nondiscriminatory access to OSS? Alternatively, regardless of whether the statutory elements for forbearance are met, are competitive LECs impaired without OSS, and should we make a finding of no impairment?

4. Other Considerations

64. For each network element or requirement discussed above, we seek comment on whether requesting carriers are no longer impaired without access to the element or requirement under section 251(d)(2), or whether the forbearance criteria are met under section 10. We also seek comment on whether additional considerations beyond impairment or forbearance would justify our proposals, or any alternatives, for each network element or requirement discussed above.

65. In particular, the D.C. Circuit has held that the Commission must ''take into account not only the benefits but also the costs of unbundling (such as discouragement of investment in innovation),'' which the Commission has done ''with the costs of unbundling brought into the analysis under § 251(d)(2)'s 'at a minimum' language.'' For example, when evaluating unbundling previously, the Commission has weighed the effects of unbundling on Congress's exhortation in section 706 of the 1996 Act that it ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans'' by removing barriers to infrastructure investment. The Commission more recently also has cited other potential costs or harms of unbundling when addressing requests for relief from a number of legacy wireline mandates imposed on incumbent LECs stemming from the 1996 Act. Such requirements can force incumbent LECs to maintain outdated TDM equipment even when they no longer desire to offer those services to their customers, undercutting the benefits of technology transitions. They can also distort the marketplace by imposing unnecessary costs on one class of competitors alone. The Commission has also reiterated Justice Breyer's observation that ''mandatory unbundling comes at a cost, including disincentives to research and development by both incumbent LECs, competitive LECs and the tangled management inherent in shared use of a common resource.'' In addition, these requirements can create disincentives for competitors to invest in their own facilities-based networks and transition their customers to next-generation services. We seek comment on the full range of those and any other relevant considerations and how they should affect our analysis regarding each network element or requirement discussed above.

66. Additionally, to the extent that the Commission has cited a given network element or requirement discussed above as a continuing obligation that would remain when granting past regulatory forbearance, we seek comment on how that should affect our analysis here. Given that forbearance petitions are addressed based on the record compiled in the relevant proceeding, we do not believe such past citations should alter our actions in this proceeding or require the continued imposition of particular requirements if the record here persuades us that relief is warranted. We seek comment on that view.

67. Conversely, we seek comment on how other aspects of our regulatory framework—such as the continued applicability of rate regulations for DS1s and DS3s in certain areas, the imposition of a reasonable comparability benchmark for voice services in areas supported by our high-cost Universal Service Fund, or the continuing obligation of all local exchange carriers ''not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services''—should weigh in our analysis. We also seek comment more generally on the impact of Commission policy changes, including the recently concluded USTelecom forbearance proceeding, on the voice and broadband marketplace.

68. In addition to a number of specific proposals discussed above, we also seek comment on alternative approaches for relief with respect to each network element or requirement discussed above, either through the impairment standard under section 251(d)(2) or forbearance under section 10. For example, is relief justified in a broader or narrower range of geographic areas? Are there different competitive conditions than those identified above that should inform our grant of relief,

and if so, how should that relief be tailored to those competitive conditions? We note that some commenters request that we defer further unbundling relief until we complete the process of revising our broadband mapping data collection. In addition, are there considerations flowing from the network deployment by incumbent LECs and/or competitive LECs in a given area—such as the extent of the providers' progress in implementing technology transitions—that should inform the scope of, and triggers for, relief? Further, how should administrability concerns inform the scope and mechanics of any relief we grant? We also seek comment on whether special considerations apply to small businesses with respect to each of our proposals above.

B. Avoided-Cost Resale

69. Except where we have forborne from such obligations, incumbent LECs must make available at regulated wholesale rates telecommunications services that they make available to their own non-carrier retail customers. In the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order,* we granted price cap incumbent LECs relief from the Avoided-Cost Resale requirement. Some parties effectively seek reconsideration of our decision to forbear from the Avoided-Cost Resale obligations granted in the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order,* rehashing arguments made in the record of that proceeding. In this NPRM, we do not revisit the decisions made in the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order,* but we will consider those commenters' arguments filed in the record here to the extent that they bear on the issues raised in this proceeding.

70. We propose to extend to non-price cap incumbent LEC service areas the forbearance previously granted with respect to Avoided-Cost Resale in price cap incumbent LEC service areas. We seek comment on this proposal. We base our proposal on the same reasons we stated for granting such forbearance to price cap LECs—*i.e.,* ''the breadth of the voice service marketplace and the number of wholesale input alternatives to competitive LECs seeking to continue serving customers currently served by Avoided-Cost Resale.''

71. Are there reasons why non-price-cap areas may differ from price cap areas with respect to the Avoided-Cost Resale requirement that is only used to provision voice-grade service? What have been the effects of the forbearance granted for Avoided-Cost Resale in the *UNE Analog Loop and Avoided-Cost Resale Forbearance Order*? Commenters should provide specific detail as to why continued Avoided-Cost Resale requirements in non-price cap areas are or are not necessary (1) to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) to ensure the protection of consumers; and (3) to serve the public interest. We also seek comment on the respective costs and benefits of this proposal versus retaining the status quo, as well as whether special considerations apply to small businesses.

C. Cost-Benefit Analysis

72. For the purpose of conducting a cost-benefit analysis of the various proposals and alternatives for which we seek comment in this NPRM, as to each network element or requirement addressed herein, we seek comment on how many UNEs or Avoided-Cost resold services are currently being purchased, and at what prices. In the absence of unbundling and resale obligations, we seek comment on what proportion of these arrangements would likely shift to alternative commercial services offered by incumbent LECs or other competitors, or would be self-provisioned, and at what prices or costs. If commenters expect that prices for commercial alternatives for UNEs or resold services will be higher or lower than the current rates, we seek comment on why that would be so. If competitive LECs were to self-provision UNE replacements, how should we estimate their market prices?

73. What are the expected impacts to investment of each network element or requirement discussed above? If incumbent LECs or competitive LECs increase their investment in fiber or next-generation services as result of any relief, how should we account for such increased investment in any cost-benefit analysis? To the extent that the elimination of certain UNEs and resold services would have economic effects on end users, we seek comment as to the magnitude of these effects and how we should quantify them. For example, how can we quantify the benefits of migrating users to next-generation services or higher speed networks? Should we confine our analysis to consumers that currently rely on UNEs or resold services (presumably indirectly) or take into account the network effects that migrations to new networks could have on all consumers?

74. We also seek comment on the benefits of lower compliance costs for incumbent LECs and other parties, and any other benefits and costs of our proposed actions. More generally, for each network element or requirement discussed above, we seek comment on the respective costs and benefits of particular alternative rules or approaches as compared to retaining the current unbundling requirement.

D. Transition Plan

75. We propose, for all UNE and Avoided-Cost Resale relief that we provide, a three-year transition period for existing customers. We seek comment on whether we should include a six-month transition period for new orders, and if so, for what elements of relief. We seek comment on this proposal.

76. Our proposal is consistent with the *UNE Transport Forbearance Order* and the *UNE Analog Loop and Avoided-Cost Resale Order,* both of which provide three-year transition periods. In those orders, we reasoned that three years was sufficient ''to fully ensure that current *and* potential competition plays its expected role'' to ensure just and reasonable rates, and for competitive LECs ''to replace their embedded base of legacy TDM customer premises equipment and other increasingly obsolete TDM-based peripheral devices with new IP-capable equipment.'' Similarly, the *BDS Order* provided a uniform transition period of three years to allow existing customers to facilitate their transition to alternative facilities or arrangements. Here, consistent with those orders, we also propose a three-year transition for any eliminated UNE and Avoided-Cost Resale obligations, whether we grant such relief through a finding of non-impairment or through forbearance. We believe that this transition period supplies the necessary incentives for both incumbent and competitive LECs alike to deploy their own next-generation networks as expeditiously as possible, while ensuring that end users do not experience undue service disruption.

77. What conditions, if any, should apply to a transition period? Are there special circumstances that require longer or shorter transition periods for any particular UNEs? Should we provide different transition periods for UNEs that we grant relief for based on a non-impairment finding vs. those based on forbearance? What about for Avoided Cost Resale? Should we provide a longer grandfathering period for Puerto Rico, for reasons similar to the unique Puerto Rico transition periods adopted in our recent forbearance orders?

78. We recognize that the transition mechanism is simply a default process

and carriers remain free to negotiate alternative arrangements superseding this transition period. Any transition mechanism would not replace or supersede any commercial arrangements carriers have reached for the continued provision of facilities or services.

79. Alternatively, we seek comment on a transition period that is shorter than three years for existing customers. In the *BDS Order,* the Commission found that the presence of a nearby potential BDS competitor would be expected to provide reasonably competitive outcomes for DS1 and DS3 services over three to five years. In the *UNE Transport Forbearance Order,* we concluded that ''connecting nearby fiber . . . is unlikely to take a full three years for any individual alternative transport link,'' but also noted that two years had elapsed since the *BDS Order* and a three-year transition would coincide with the outer bound of the Commission's three to five year expectation in the *BDS Order;* in the *UNE Analog Loop and Avoided-Cost Resale Order,* we noted that a three-year period was consistent with prior Commission action and ''should provide more than enough time for competitive LECs and their customers to transition.'' Should we set a transition deadline of August 2, 2022, which would align the transition period with those of the *UNE Transport Forbearance Order* and the *UNE Analog Loop and Avoided-Cost Resale Order*? If so, should we tie this shorter transition period to only some relief or all relief granted? What are the administrative benefits of syncing the transitions? Are such benefits outweighed by what would be a shorter transition for those UNE and Avoided-Cost Resale obligations that we seek comment on today?

80. We note that in the *Triennial Review Remand Order,* after finding non-impairment, the Commission provided a transition period of twelve months for high-capacity loops and DS1 and DS3 transport for existing customers and eighteen months for UNE Dark Fiber Transport for existing customers. What, if any, weight should we place on this prior transition timeframe with respect to current UNE obligations that are eliminated through a finding of non-impairment? Commenters should provide any other input or considerations that should factor into our transition timeframe determinations.

II. Initial Regulatory Flexibility Analysis

81. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

82. In the NPRM, we propose to modernize our unbundling and related rules for local loops and dark fiber transport, as well as other types of network elements. Specifically, the Commission proposes to eliminate UNE DS1 and DS3 loop obligations in counties and study areas deemed competitive in the *BDS Order* and the *RoR BDS Order,* UNE loops in urban census blocks, unbundled dark fiber transport to wire centers that are within a half mile of alternative fiber, UNE subloops in the particular instances or geographic areas where we propose to find no impairment for UNE DS0 loops for the underlying loop to the customer's premises, the UNE Analog Loop obligation where it still applies, the unbundling requirement for the narrowband frequencies of hybrid loops, the stand-alone UNE network interface device (NID) obligation, the operations support systems (OSS) unbundling obligation, except in the case where it is used for managing other UNEs, and avoided-cost resale obligations in non-price cap areas.

B. Legal Basis

83. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1 through 4, 10, and 201, 202, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 160, 201, 202, and 251.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

84. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the NPRM seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one 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 SBA.

1. Total Small Entities

85. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.2 million businesses.

86. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

87. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based

on these data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

2. Broadband Internet Access Service Providers

88. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard, the majority of firms in this industry can be considered small.

3. Wireline Providers

89. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

90. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. A total of 1,307 firms reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

91. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

92. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

93. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

94. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small

business size standard, the majority of these prepaid calling card providers can be considered small entities.

95. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *Second Further Notice.*

96. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities.

4. Wireless Providers—Fixed and Mobile

97. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

98. According to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

99. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

100. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

101. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $35 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

102. The NPRM propose changes to, and seeks comment on, the Commission's unbundling and related rules for local loops and dark fiber transport, as well as other types of network elements. The objective of the proposed modifications is to encourage the deployment of next-generation networks and unburden incumbent LECs where there is substantial evidence of facilities-based competition and market entry. Beyond the benefits that providers will enjoy from a decreased regulatory burden on their day-to-day operations, these changes would not affect the reporting, recordkeeping, and other compliance requirements of carriers, some of which are small entities.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

103. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

104. The rule changes proposed by the NPRM would reduce the economic impact and market distortions of the Commission's unbundling rules on incumbent LECs and would increase the incentives for incumbent LECs and new entrants to invest in new facilities and deploy new technologies. We seek comment as to any additional economic burden incurred by small entities that may result from the rule changes proposed in the NPRM.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

105. None.

III. Procedural Matters

106. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain proposed information collection(s) subject to 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, *see* 44 U.S.C. 3506(c)(4).

107. *Initial Regulatory Flexibility Analysis.* An initial regulatory flexibility analysis (IRFA) is set forth above. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking.* The Commission will send a copy of the *Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

108. *Ex Parte Information.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written e*x parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. Ordering Clauses

109. Accordingly, *it is ordered* that, pursuant to sections 1 through 4, 10, 201, 202, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 160, 201, 202, and 251, this Notice of Proposed Rulemaking *is adopted.*

110. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 51 as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 47 U.S.C. 151 through 155, 201 through 205, 207 through 209, 218, 225 through 227, 251 through 252, 271, 332 unless otherwise noted.

■ 2. Amend § 51.319 by:
■ a. Revising paragraph (a)(1);
■ b. Removing paragraph (a)(3)(iii)(C); and
■ c. Revising paragraphs (a)(4)(i), (a)(5)(i), (b), and (d)(2)(iv).

The revisions read as follows:

§ 51.319 Specific unbundling requirements.

(a) * * *

(1) *Copper loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop in census blocks defined as rural by the Census Bureau on an unbundled basis. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (*e.g.,* DS0s and integrated services digital network lines) as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in paragraph (a)(2)(i) of this section. The availability of DS1 and DS3 copper loops is subject to the requirements of paragraphs (a)(4) and (5) of this section.

* * * * *

(4) * * * (i) Subject to the cap described in paragraph (a)(4)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both the business line and fiber-based collocator thresholds, no future DS1 loop unbundling will be required in that wire center. In addition, a DS1 loop only is available to a building located in one or more of the following: (A) Any county or portion of a county served by a price cap incumbent LEC that is not included on the list of counties that have been

deemed competitive pursuant to the competitive market test established under 49 CFR 69.803; (B) any study area served by a rate-of-return incumbent LEC provided that study area is not included on the list of competitive study areas pursuant to the competitive market test established under 47 CFR 61.50; or (C) any census block defined as rural by the Census Bureau if being requested solely to serve residential customers. A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

* * * * *

(5) *DS3 loops.* (i) Subject to the cap described in paragraph (a)(5)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. Once a wire center exceeds the business line and fiber-based collocator thresholds, no future DS3 loop unbundling will be required in that wire center. In addition, a DS3 loop only is available to a building located in one of the following: (A) Any county or portion of a county served by a price cap incumbent LEC that is not included on the list of counties that have been deemed competitive pursuant to the competitive market test established under 49 CFR 69.803; or (B) any study area served by a rate-of-return incumbent LEC provided that study area is not included on the list of competitive study areas pursuant to the competitive market test established under 47 CFR 61.50. A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second.

* * * * *

(b) *Subloops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to subloops on an unbundled basis in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (b) of this section, provided that the underlying loop is available as set forth in paragraph (a) of this section.

* * * * *

(d) * * *

(2) * * *

(iv) *Dark fiber transport.* Dark fiber transport consists of unactivated optical interoffice transmission facilities. Incumbent LECs shall unbundle dark fiber transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (d)(3) of this section, where both wire centers defining the route are either Tier 1, Tier 2, or a Tier 3 wire center identified on the list of wire centers that has been found to be within a half mile of alternative fiber pursuant to the Report and Order on Remand and Memorandum Opinion and Order in WC Docket No. 18–14, FCC 19–66 (released July 12, 2019). An incumbent LEC must unbundle dark fiber transport if a wire center on either end of a requested route is a Tier 3 wire center that is not on the published list of wire centers.

* * * * *

[FR Doc. 2019–27607 Filed 1–3–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2019–0055; FXES11130900000C6–123–FF09E30000]

RIN 1018–BD49

Endangered and Threatened Wildlife and Plants; Removing the Kanab Ambersnail From the 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 Kanab ambersnail (*Oxyloma haydeni kanabensis*) from the Federal List of Endangered and Threatened Wildlife. This determination is based on a thorough review of the best available scientific information. Our review indicates that Kanab ambersnail is not a valid subspecies and therefore cannot be listed as an endangered entity under the Act. We are seeking information and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before March 6, 2020. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 20, 2020.

ADDRESSES: *Comment submission:* 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–R6–ES–2019–0055, 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!'' 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 formation is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2019–0055, 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 and supporting documents, including a copy of the recovery plan and the 5-year review referenced throughout this document, are available on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2019–0055. 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 West Orton Circle, Suite 50, West Valley City, UT 84119; telephone 801–975–3330. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, telephone 801–975–3330, ext. 61912. Direct all questions or requests for additional information to: KANAB AMBERSNAIL QUESTIONS, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Persons who use a TDD may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We want any final rule resulting from this proposal to be as accurate as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, and other interested parties concerning this proposed rule. Comments should be as specific as possible. We particularly seek comments concerning:

(1) Reasons why we should or should not remove the Kanab ambersnail from the List of Endangered and Threatened Wildlife (''delist'' the Kanab ambersnail);

(2) Additional taxonomic or other relevant data concerning the Kanab ambersnail; and

(3) Additional information concerning the range, distribution, and population size of the *Oxyloma* genus, *Oxyloma haydeni,* or any subspecies of *Oxyloma haydeni.*

(4) Comments regarding our decision to move forward with removing Kanab ambersnail from the List of Threatened and Endangered Species without resolution on what larger taxonomic entity it belongs to.

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.''

Prior to issuing a final determination on 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 and information we collect, 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**. If you submit your comments electronically, you must submit your comments on *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. Please note that comments posted to this website are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-deliver hardcopy comments that include 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. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, 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, Utah Ecological Services Field 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. We must receive requests for a public hearing, in writing, by the date specified above in **DATES**. You must send your request 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 accommodation, in the **Federal Register** and local newspapers at least 15 days before the hearing.

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, 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. The purpose of peer review is to ensure that our delisting decision is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions in this proposed delisting of the Kanab ambersnail. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input and any additional information we received as part of our process of making a final decision on this proposal. Such communication may lead to a final decision that differs from this proposal.

Previous Federal Actions

On May 22, 1984, we published a notice of review in the **Federal Register** (49 FR 21664) issuing a list of invertebrate wildlife being considered for listing as endangered or threatened species, which included the Kanab ambersnail as a category 2 species. Category 2 species were taxa for which the Service had information indicating the appropriateness of a proposal to list the species as endangered or threatened but for which more substantial data were needed on biological vulnerability and threats. On January 6, 1989, we published an updated notice of review, which maintained the Kanab ambersnail as a category 2 species (54 FR 554). At the time, only two populations of the Kanab ambersnail were known to occur, in Utah. A third population was discovered in Arizona in 1991 (57 FR 13657; April 17, 1992).

A survey conducted in 1990 discovered that one Utah population of the Kanab ambersnail was nearly extirpated, while the other Utah population was subjected to major habitat alteration and destruction (Clarke 1991, p. 31). We considered this information as sufficient to elevate the Kanab ambersnail from a category 2 to a category 1 species, and on August 8, 1991, we published an emergency rule to list the Kanab ambersnail as endangered (56 FR 37668). This emergency protection expired on April 3, 1992 (56 FR 37668; August 8, 1991).

On November 15, 1991, we proposed to list the Kanab ambersnail as an endangered species (56 FR 58020). On April 17, 1992, we published a final rule listing the Kanab ambersnail as an endangered species (57 FR 13657). We did not designate critical habitat for the

Kanab ambersnail as explained in our April 17, 1992, final rule (57 FR 13657), due to a danger of over-collection or molestation. On October 12, 1995, we finalized the Kanab ambersnail recovery plan (Service 1995, entire).

We completed a 5-year review of the species' status in July 2011 (Service 2011, entire). In the 5-year review, we analyzed existing data and threats to the species, and concluded the Kanab ambersnail should remain an endangered species (Service 2011, p. 21). This decision was based on the fact that the threats to the Kanab ambersnail and its distribution have changed minimally since it was first listed (Service 2011, p. 21). As of the 5-year review, several genetic studies indicated that at least one of the three populations identified as Kanab ambersnail was potentially part of a different species or subspecies, but we did not consider those studies certain enough to recommend delisting due to error at that time (Miller *et al.* 2000, p. 8; Stevens *et al.* 2000, p. 7; Culver *et al.* 2007, p. 3; Service 2011, pp. 8–9). The subsequent publication of a larger, more comprehensive study on the genetics of Kanab ambersnail and the Oxyloma genus (Culver *et al.* 2013, entire), coupled with the previous genetic research, is considered in this proposed rule determination.

Species Description and Habitat Information

It is our intent to discuss only those topics directly related to delisting Kanab ambersnail in this proposed rule. For more information on the description, biology, ecology, and habitat of Kanab ambersnail, please refer to the final listing rule published in the **Federal Register** on April 17, 1992 (57 FR 13657); the most recent 5-year review for Kanab ambersnail completed in July 2011 (Service 2011); and the Kanab ambersnail recovery plan (Service 1995). These documents are available as supporting materials on *http://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0055.

The Kanab ambersnail (*Oxyloma haydeni kanabensis*), as currently taxonomically identified, is a terrestrial snail in the family Succineidae. Succineids are usually referred to as ambersnails due to their mottled grayish-amber to yellowish-amber colored shells (Sorensen and Nelson 2002, p. 5).

The Kanab ambersnail typically inhabits marshes and other wetlands watered by springs and seeps at the base of sandstone or limestone cliffs (Clarke 1991, pp. 28–29; Spamer and Bogan 1993, p. 296; Meretsky *et al.* 2002, p. 309). Habitat vegetation can consist of cattail (*Typha domingensis*), sedge (*Juncus* spp.), native crimson monkeyflower (*Mimulus cardinalis*), watercress (*Nasturtium officinale*), native water sedge (*Carex aquatilis*), and maidenhair ferns (*Adiantum capillus-veneris*) (57 FR 13657, April 17, 1992; Stevens *et al.* 1997, p. 6; Sorensen 2005, p. 3). The Kanab ambersnail often inhabits dead and decaying litter and live stems of plants (Service 2011, p. 11).

When Kanab ambersnail was listed, we knew of two populations in Utah (Three Lakes and Kanab Creek Canyon) and one population in Arizona (Vasey's Paradise) (57 FR 13657, April 17, 1992). The Kanab Creek Canyon population in Utah was extirpated by 1991, after dewatering of the seep for livestock use severely reduced the available habitat. Kanab ambersnail was last found there in 1990, when three individuals were identified (Service 2011, p. 12). Currently, there are two naturally occurring populations of Kanab ambersnail (Vasey's Paradise in Arizona, and Three Lakes in Utah) and one introduced population (Upper Elves Canyon in Arizona) (Service 2011, p. 6).

The Vasey's Paradise population was discovered in 1991 (Spamer and Bogan 1993, p. 47). Vasey's Paradise is a riverside spring located approximately 33 miles (mi) (53 kilometers (km)) downstream of Lee's Ferry on the Colorado River, in Grand Canyon National Park, Arizona (Spamer and Bogan 1993, p. 37). Occupied and potential habitat at Vasey's Paradise is 9,041 square feet (ft^2) (840 square meters (m^2)) (Service 1995, p. ii). Available habitat has increased since the time of listing due to water management practices in the Grand Canyon. The population is protected by National Park Service regulations and the presence of poison ivy, which deters visitors (Stevens *et al.* 1997, p. 12; Sorensen 2016, pers. comm.). A survey in 2016 found only one snail, but search conditions were difficult and time was limited (Sorensen 2016, pers. comm.). Fourteen individuals were collected in 2008, for genetic analysis (Culver *et al.* 2013, p. 7). The most recent population estimate is from 2002, which estimated 3,124 individuals and noted that population numbers could be highly variable from year to year (Gloss *et al.* 2005, p. 3).

The Three Lakes population is a series of small ponds on private land approximately 6 mi (10 km) northwest of Kanab, Utah (Clarke 1991, p. 28; Service 1995, p. 3). Occupied and potential habitat is approximately 4.94 acres (ac) (2 hectares (ha)) (Service 1995, p. 3). Available habitat is wet meadow and marsh. The habitat was greatly reduced in size and population beginning in 1991, due to preparations for anticipated development, which resulted in the original emergency listing (Service 2011, p. 11). The development anticipated at the time of listing has not occurred, and snails were found there in 2008 (Culver *et al.* 2013, p. 6) and in 2016 (Sorensen 2016, pers. comm.). In 2016, the land was sold to Best Friends Animal Sanctuary, which has expressed a willingness to preserve the habitat (Sorensen 2016, pers. comm.). No recent population estimate is available.

Upper Elves Canyon is located approximately 83 mi (134 km) downstream of Vasey's Paradise on the Colorado River, in Grand Canyon National Park, Arizona (Sorensen 2016, p. 1). Occupied and potential habitat is adjacent to a perennial seep and is 1,068 ft^2 (99.2 m^2) (Sorensen 2005, p. 3). This population is protected by National Park Service regulations, as well as by its inaccessibility (Service 2011, p. 7). This population was established by the Arizona Fish and Game Department between 1998 and 2002, and as of 2005 was considered self-sustaining with an estimated population of approximately 700 individuals (Sorensen 2005, p. 9).

Taxonomy

Kanab ambersnail was first collected in 1909, by James Ferriss from an area called ''The Greens,'' a vegetated seep approximately 6 mi (10 km) north of Kanab in Kanab Creek Canyon, Utah (57 FR 13657, April 17, 1992; Service 1995, p. 2). However, the Kanab ambersnail has not been found at its type locality since 1991 (Meretsky *et al.* 2002, p. 314; Culver *et al.* 2013, p. 6).

The snails collected by James Ferriss in 1909 were initially placed in the species *Succinea hawkinisi,* but Pilsbry (1948, p. 797) placed them in *Oxyloma* and created the subspecies *kanabensis* under the species *haydeni* (57 FR 13657, April 17, 1992). The subspecies *kanabensis* classification was considered to be temporary at the time, and the author recommended that the taxonomic status be reconsidered in the future (Pilsbry 1948, p. 798; Clarke 1991, p. 23; 57 FR 13657, April 17, 1992).

We have assessed all available genetic information for Kanab ambersnail (Miller *et al.* 2000, entire; Stevens *et al.* 2000, entire; Culver *et al.* 2013, entire). Since the listing of Kanab ambersnail in 1992 (57 FR 13657; April 17, 1992) and the publication of the Kanab ambersnail recovery plan in 1995 (Service 1995, entire), several studies on subspecies

distribution, morphological characteristics, and genetic relationships to other *Oxyloma* species have been completed. We briefly describe these studies below. At this time, these studies represent the best scientific information available in order for us to analyze the Kanab ambersnail's distribution and taxonomic changes.

There are various types of analyses that can be done to determine genetic structure of a species: (1) Mitochondrial DNA, which is rapidly evolving and useful to determine recent populations; (2) nuclear microsatellite DNA, which has high amounts of polymorphism and can be used to look at populations within a species; (3) nuclear DNA, which is inherited paternally (unlike mitochondrial DNA, which is inherited maternally); and (4) amplified fragment length polymorphisms (ALFP), which are used to sample multiple loci across the genome.

Miller *et al.* (2000) used ALFP to determine intra- and inter-population genetic information for four *Oxyloma* species in Utah and Arizona. Among these, two Niobrara ambersnail (*Oxyloma haydeni haydeni*) locations were studied at Indian Gardens (Arizona) and Minus Nine Mile Spring (Arizona), and two Kanab ambersnail populations were studied at Three Lakes (Utah) and Vasey's Paradise (Arizona) (Miller *et al.* 2000, pp. 1845–1946). From this study, the Kanab ambersnail population at Three Lakes appears more closely related to the Niobrara ambersnail population at Indian Garden than to the Kanab ambersnail population at Vasey's Paradise (Miller *et al.* 2000, p. 1852).

Stevens *et al.* (2000) used mitochondrial DNA and morphological analysis to distinguish Succineidae (*Oxyloma, Catinella,* and *Succinea*) populations in the United States and Canada. The authors collected over 450 samples from seven U.S. States and Canadian provinces, including from 63 different populations or locations of snails (Stevens *et al.* 2000, p. 4). Determining *Oxyloma* species based on morphology was shown to be inaccurate (Stevens *et al.* 2000, pp. 4–5, 42). Vasey's Paradise did not cluster with another Kanab ambersnail population or the two sampled Niobrara ambersnail populations, leading the authors to suggest Vasey's Paradise might represent a unique species (Stevens *et al.* 2000, p. 41). However, a later, more comprehensive study found that Vasey's Paradise clustered closely enough with samples from other surrounding *Oxyloma* populations for them all to be considered the same *Oxyloma* species (Culver *et al.* 2013, p. 57).

In the most recent and detailed peer-reviewed study, ambersnails were collected from 12 locations in Arizona and Utah, with each location providing at least 14 ambersnail specimens (Culver *et al.* 2013, p. 5). Samples consisted of Kanab ambersnail, Niobrara ambersnail, blunt ambersnail (*Oxyloma retusum*), undescribed species of *Oxyloma,* and *Catinella* (used to provide an outgroup comparison) (Culver *et al.* 2013, p. 6). Between the *Oxyloma* populations, shell morphology did not have the variation usually associated with different species, leading the authors to suggest that none of the populations sampled was reproductively isolated (Culver *et al.* 2013, p. 52). Genetic results suggested that there was gene flow among all the populations sampled, most likely due to short- or long-term dispersals from other populations (Culver *et al.* 2013, p. 57). Additionally, Kanab ambersnail samples from Vasey's Paradise did not cluster with the other two Kanab ambersnail populations (Culver *et al.* 2013, pp. 51, 55). The authors concluded that the three populations of Kanab ambersnail are not a valid subspecies of *Oxyloma haydeni* and should instead be considered part of the same taxa as ambersnails from the eight other populations of *Oxyloma* in Utah and Arizona that were sampled for comparison (Culver *et al.* 2013, entire). This study declined to positively identify a species-level taxon for these 11 populations of ambersnail, due to lack of genetic information on the genus (Culver *et al.* 2013). The primary author stated later that her expert opinion was they should all, including those previously identified as Kanab ambersnail, be considered Niobrara ambersnail (*Oxyloma hadenyi*) (Culver 2016, pers. comm.). The authors suggested that specimens from the type locality of the Niobrara ambersnail in Nebraska could be examined for comparison to verify this conclusion (Franzen 1964, p. 73; Culver *et al.* 2013, p. 57; Culver 2016, pers. comm.).

For the Kanab ambersnail to be considered a distinct subspecies, nuclear and mitochondrial DNA tests should show that the three populations cluster together when compared to other populations of ambersnails (Culver *et al.* 2013, p. 55). However, the Vasey's Paradise population does not cluster with the other two Kanab ambersnail populations, but the degree of variation shown in Vasey's Paradise from the other populations was not unique enough to constitute a subspecies on its own, as it shares markers with several nearby populations of non-listed Oxyloma snails (Stevens *et al.* 2000, p. 41; Culver *et al.* 2013, p. 55–57).

The genetic uniqueness in Vasey's Paradise may be attributable to flooding, which can erode away ideal vegetation or habitat, leaving only a few individuals able to survive and re-establish the population at that site, creating a genetic bottleneck. Genetic diversity at these types of sites will be lower than at sites that have experienced short- or long-distance dispersals (Culver *et al.* 2013, p. 55). Furthermore, ambersnails have the ability to self-reproduce, allowing for colonization of new areas by only one individual, which may explain how many genetically distinct populations developed in a short time period (Culver *et al.* 2013, p. 56). At least one bottleneck event in the past, possibly flooding, caused unusual population genetic events (Culver *et al.* 2013, p. 55).

Overall, these studies show that shell morphology and anatomical characteristics that were once considered diagnostic do not reliably correspond with the results from genetic analyses of Succineidae snails (Hoagland and Davis 1987, p. 519; Pigati *et al.* 2010, p. 523). Samples originally identified as different species or subspecies based on physical differences are consistently found to be related closely enough to qualify as members of the same species based on genetic studies (Culver *et al.* 2013, entire; Miller *et al.* 2000, entire; Stevens *et al.* 2000, entire). Traditionally, shell morphology of Kanab ambersnail, such as its slender and drawn out spire and short shell aperture, was used to distinguish Kanab ambersnail from other members of *Oxyloma* (Pilsbry 1948, pp. 797–798). However, shell shape can vary as much within a population as within a species (Hoagland and Davis 1987, p. 519). Therefore, it is important to consider other factors such as genetics, anatomy, and habitat to determine a species within *Oxyloma* (Hoagland and Davis 1987, p. 519; Sorensen and Nelson 2002, p. 5).

In addition to shell morphology, reproductive anatomy (phallus shape) was previously a main determining factor of the *Oxyloma* genus (Miller *et al.* 2000, p. 1853). However, anatomical descriptions used to classify the Kanab ambersnail had no quantifying factors, such a prostate gland length, and soft tissues were difficult to measure objectively (Pilsbry 1948, p. 798; Culver *et al.* 2013, pp. 52–53). The reproductive system is the most susceptible among organ systems to selection pressure (Franzen 1963, p. 84). Overall, anatomical characteristics have

been found to vary greatly within *Oxyloma* (Culver *et al.* 2013, p. 52).

There have been at least two instances when a species of snail was placed in the wrong genus due to relying solely on the reproductive anatomy (Johnson *et al.* 1986, p. 105; Miller *et al.* 2000, p. 1853). In another case, variation in anatomical structure was found in blunt ambersnail, leading the authors to conclude that the species was not restricted geographically as initially believed (Franzen 1963, p. 94). Previous *Oxyloma* studies have used only one or two specimens to determine the species' taxonomic status, which makes it difficult to properly assess the true status (Hoagland and Davis 1987, p. 515).

Standards for quantifying anatomy are minimal and not descriptive enough, with words such as small, medium, and large being used, which are vague and not measurable (Hoagland and Davis 1987, p. 478). Anatomical characteristics should not be the only factor to determine a species within *Oxyloma,* even with an understanding of the individual and geographical variation (Franzen 1963, p. 83). Variation between populations, anatomical differences among individuals, overlapping habitat, and minimal consistency with the anatomical features make it difficult to rely on anatomical descriptions to determine species classification (Franzen 1964, p. 80; Sorensen and Nelson 2002, pp. 4–5). Overall, reproductive anatomy is likely not a good species indicator in snails; instead, genetic relationships provide the most reliable method of classifying taxa.

In summary, these analyses present multiple interpretations of the taxonomy of Kanab ambersnail, none of which correlates to that of our original listing. Although the exact taxonomy of the genus Oxyloma and its constituent species remains uncertain, it is clear that that the populations designated as Kanab ambersnail do not make up, together or separately, a valid subspecies. The 1992 final listing rule for the Kanab ambersnail (57 FR 13657; April 17, 1992) relied on the best available information at the time, and only included snails found in Vasey's Paradise in Arizona, and Three Lakes and Kanab Creek in Utah. This has changed with the addition of the 2013 genetic study of the *Oxyloma* genus in Utah and Arizona (Culver *et al.* 2013, entire).

The various published and unpublished genetics reports described above offer different conclusions about how Succineid snails should be classified, particularly within the genus *Oxyloma.* However, none of the genetic studies provides support for *Oxyloma haydeni kanabensis* as a valid subspecies. Additionally, available genetic evidence suggests that at least one population identified as Kanab ambersnail is more closely related to other nearby *Oxyloma* populations than it is to the other two Kanab ambersnail populations.

Therefore, we are proposing to delist Kanab ambersnail based on the best available science. The currently listed entity for the Kanab ambersnail, restricted to Vasey's Paradise and Upper Elves Canyon, Arizona, and Three Lakes, Utah, is not a valid taxonomic subspecies. We are unable to evaluate the populations identified as Kanab ambersnail relative to the larger entity because the larger entity has not yet been defined. If we had conclusive information available about the taxonomy of this genus, we would conduct a status assessment of the larger entity, but in this case we do not have enough information to conduct that analysis. We do not consider the absence of information on the larger taxonomy of a group to be sufficient reason to keep an invalid subspecies listed as Threatened.

Delisting Proposal

Section 4 of the Act and its implementing regulations, 50 CFR part 424, set forth the procedures for listing, reclassifying, or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error.

For the Kanab ambersnail, we conclude that the existing scientific information demonstrates that *Oxyloma haydeni kanabensis* does not represent a valid taxonomic entity and, therefore, does not meet the definition of ''species'' as defined in section 3(16) of the Act. Therefore, *Oxyloma haydeni kanabensis* no longer warrants listing under the Act. The Kanab ambersnail does not require a post-delisting monitoring (PDM) plan because the monitoring plan does not apply to delisting species due to taxonomic error.

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the Kanab ambersnail from the Federal List of Endangered and Threatened Wildlife. Because no critical habitat was ever designated for this subspecies, this rule would not affect 50 CFR 17.95.

The prohibitions and conservation measures provided by the Act would no longer apply to the Kanab ambersnail. Interstate commerce, import, and export of the Kanab ambersnail would not be prohibited under the Act. In addition, Federal agencies are no longer required to consult under section 7 of the Act on actions that may affect the Kanab ambersnail.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

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(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), 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.

The populations listed as Kanab ambersnail do not occur on Tribal land. We have determined that while no Tribes would be directly affected by this proposed action, any delisting that may occur, may result in changes to the flow regime for the Colorado River in and adjacent to the Grand Canyon. Several Tribes have an historic affiliation with the Grand Canyon and could be affected by flow changes, should they occur. The potentially impacted Tribes are the Chemehuevi, the Colorado River Indian Tribes, the Hualapai, the Hopi, the Kaibab Band of Paiute, the San Carlos Apache, the San Juan Southern Paiute, the Navajo, and the Zuni. These Tribes have been informed of the proposed delisting.

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–2019–0055, or upon request from the Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Service's Utah Ecological Services Field 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 hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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 ''Ambersnail, Kanab'' under SNAILS from the List of Endangered and Threatened Wildlife.

Dated: December 10, 2019.

Margaret Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–28352 Filed 1–3–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 85, No. 3

Monday, January 6, 2020

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

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee (RAC) will meet in Elkins, West Virginia. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcuqAAC*.

DATES: The meeting will be held on January 16, 2020 at 10 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held in the First Floor Conference Room at the Monongahela National Forest Headquarters Building, 200 Sycamore Street in Elkins, West Virginia. RAC members and the public may join the meeting via telephone conference by calling: 1–888–844–9904 access code: 9171244#.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest Headquarters Building, 200 Sycamore Street in Elkins, West Virginia. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Fosbender, Partnerships and Public Affairs Specialist, by phone at 304–635–4446 or via email at *julie.fosbender@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide an overview of the Secure Rural Schools and Community Self-Determination Act and the responsibilities of RAC members.

2. Discuss and decide how the WV RAC will function.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 9, 2020 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Julie Fosbender, Partnerships and Public Affairs Specialist, 200 Sycamore St., Elkins, WV 26241; by email to *julie.fosbender@usda.gov*; or via facsimile to 304–637–0582.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: December 31, 2019.

Ann Goode,

Acting Director, Office of Regulatory and Management Services, USDA Forest Service.

[FR Doc. 2019–28533 Filed 1–3–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a meeting via teleconference on Thursday January 16, 2020 from 1:30–2:30 p.m. Pacific Time for the purpose of discussing the Committee's proposed forthcoming topic of study: Voting Rights in Washington.

DATES: The meeting will be held on Thursday January 16, 2020, at 1:30 p.m. Pacific Time.

Public Call Information: Dial: 800–353–6461, Conference ID: 5537041.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following

the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Washington Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Voting Rights in Washington
Public Comment
Adjournment

Dated: December 30, 2019

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of committee availability and preparations for upcoming hearing.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–28452 Filed 1–3–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Monday February 10, 2020 at 2:00 p.m. Central time. The Committee will discuss next steps in their study of prosecutorial discretion in the state.

DATES: The meeting will take place on Monday February 10, 2020 at 2:00 p.m. Central Time.

Public Call Information: Dial: 800–367–2403, Conference ID: 5239702.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Discussion: Prosecutorial Discretion in Mississippi
III. Public comment
IV. Next steps
V. Adjournment

Dated: December 30, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–28456 Filed 1–3–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Florida Advisory Committee (Committee) will hold a meeting on Tuesday January 14, 2020, at 3:00 p.m. (Eastern) for the purpose of discussing next steps in hearing testimony regarding voting rights in Florida.

DATES: The meeting will be held on Tuesday January 14, 2020, from 3:00–4:00 p.m. Eastern.

Public Call Information: Dial: 800–353–6461, Conference ID: 2199829.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Written comments may be mailed to the Regional Program Unit Office, U.S.

Commission on Civil Rights, 230 S Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or may be emailed to Carolyn Allen at *callen@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Program Unit at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Voting Rights in Florida
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of committee availability and preparations for upcoming hearing.

Dated: December 30, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–28453 Filed 1–3–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Thursday, February 20, 2020, from 12:00–1:00 p.m. Eastern Time for the purpose of discussing next steps in the Committee's final report and recommendations to the Commission on education funding in the state.

DATES: The meeting will be held on Thursday February 20, 2020, at 12:00 p.m. Eastern Time.

Public Call Information: Dial: 800–367–2403, Conference ID: 9015615.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call

Discussion: Education Funding in Ohio

Public Comment

Adjournment

Dated: December 30, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–28454 Filed 1–3–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip (SSSS) from the People's Republic of China (China) for the period January 1, 2018 through December 31, 2018.

DATES: Applicable January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz, Enforcement and Compliance, AD/CVD Operations, Office VII, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, Commerce published a notice of opportunity to request an administrative review of the CVD order on SSSS from China for the period January 1, 2018 through December 31, 2018.[1] On April 30, 2019, AK Steel Corporation, Allegheny Ludlum LLC d/b/a ATI Flat Rolled Products, North American Stainless, and Outokumpu Stainless USA LLC (collectively, the petitioners), requested an administrative review of exports of subject merchandise to the United States by specific companies in China.[2] On June 13, 2019, in accordance with section 751(a) the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on SSSS from China.[3] On June 19, 2019, the petitioners timely withdrew their request for an administrative review

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 12207 (April 1, 2019).

[2] *See* Petitioner's Letter, ''Countervailing Duty Order on Stainless Steel Sheet and Strip from the People's Republic of China—Petitioners' Request for Initiation of Second Administrative Review,'' dated April 30, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 27587 (June 13, 2019).

with respect to all entities for which they had requested a review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.'' The petitioners withdrew their request within the 90-day time limit. Because we received no other requests for review of the order on SSSS from China, we are rescinding the administrative review of the order in its entirety, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of SSSS from China during the period of review at rates equal to the cash deposit rate of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of countervailing duties occurred and the subsequent assessment of doubled countervailing duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 30, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–28493 Filed 1–3–20; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* Petitioner's Letter, ''Countervailing Duty Order on Stainless Steel Sheet and Strip from the People's Republic of China—Petitioners' Withdrawal of Requests for Second Administrative Review,'' dated June 19, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–828]

Certain Uncoated Paper From Indonesia: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that APRIL, the lone respondent in this administrative review, made sales of certain uncoated paper at prices below normal value during the period of review (POR) March 1, 2018 through February 28, 2019.

DATES: Applicable January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3342.

SUPPLEMENTARY INFORMATION:

Background

The review covers one producer/exporter of the subject merchandise, APRIL. APRIL is a collapsed entity consisting of the following companies: APRIL Fine Paper Macao Offshore Limited, APRIL Fine Paper Trading Pte. Ltd., APRIL International Enterprise Pte. Ltd., A P Fine Paper Trading (Hong Kong) Limited, PT Anugerah Kertas Utama, PT Riau Andalan Kertas, PT Asia Pacific Rayon, and PT Sateri Viscose International (collectively, APRIL).[1]

On November 8, 2019, Commerce published the *Preliminary Results.* Although we invited parties to comment on the preliminary results of the review,[2] no interested party submitted comments. Accordingly, no decision memorandum accompanies this **Federal Register** notice.[3] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise under review includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level[4] of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ''printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

On September 1, 2017, Commerce determined that that imports of uncoated paper with a GE brightness of 83 ± 1% (83 Bright paper), otherwise

[1] *See Certain Uncoated Paper from Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 84 FR 60380 (November 8, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM) at 1.

[2] *See Preliminary Results,* 84 FR at 60381.

[3] For further details of the issues addressed in this proceeding, *see Preliminary Results* PDM.

[4] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ''Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

meeting the description of in-scope merchandise, constitute merchandise ''altered in form or appearance in minor respects'' from in-scope merchandise that are subject to this order.[5]

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of the Review

We made no changes from the *Preliminary Results.* Therefore, as a result of this review, we determine that the dumping margin for APRIL for the period March 1, 2018 through February 28, 2019 is as follows:

Exporter/producer	*Ad valorem* dumping margin (percent)
APRIL Fine Paper Macao Offshore Limited, APRIL Fine Paper Trading Pte. Ltd., APRIL International Enterprise Pte. Ltd., A P Fine Paper Trading (Hong Kong) Limited, PT Anugerah Kertas Utama, PT Riau Andalan Kertas, PT Asia Pacific Rayon, and PT Sateri Viscose International (collectively, APRIL)	66.82

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Because APRIL withdrew its participation from this review and reported no information to Commerce for this POR, we will instruct CBP to apply an assessment rate to all entries of merchandise produced and/or exported by APRIL equal to the dumping margin indicated above. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for APRIL will be the rate shown above; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.10 percent, the all-others rate made effective by the LTFV investigation.[6] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: December 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–28492 Filed 1–3–20; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 82 FR 41610 (September 1, 2017).

[6] *See Certain Uncoated Paper From Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11174, 11176 (March 3, 2016).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR084]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: NMFS is notifying the public of the issuance of four permits for summer steelhead, summer/fall Chinook salmon, and fall Chinook salmon hatchery programs in the Upper Columbia River Basin.

SUMMARY: Notice is hereby given that NMFS has issued permits, pursuant to section 10 of the Endangered Species Act (ESA), for the funding and operation of programs rearing and releasing summer steelhead, summer/fall Chinook salmon, and fall Chinook salmon programs. The permits address programs operated by the Washington Department of Fish and Wildlife (WDFW) and the Douglas County Public Utility District (PUD). The programs are funded by the Douglas County PUD, Chelan County PUD, and Grant County PUD.

FOR FURTHER INFORMATION CONTACT: Charlene Hurst at (503) 230–5409 or by email at *charlene.n.hurst@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Upper Columbia River Spring Chinook (*Oncorhynchus tshawytscha*): Endangered, naturally and artificially propagated.

• Upper Columbia River Steelhead (*O. mykiss*): Threatened, naturally and artificially propagated.

Discussion of the Biological Analysis Underlying Permit Issuance

NMFS has issued permits for seven hatchery programs: Chelan Falls Summer/Fall Chinook Salmon, Wenatchee Summer/Fall Chinook Salmon, Methow Summer/Fall Chinook Salmon, Wells Hatchery Summer/Fall Chinook Salmon, Priest Rapids Fall Chinook Salmon, Ringold Springs Fall Chinook Salmon, and Wells Complex Summer Steelhead. These hatchery programs are intended to contribute to the survival and recovery of Upper Columbia River steelhead and enhance fishing opportunity on hatchery-origin summer/fall and fall Chinook salmon and steelhead returns. The summer/fall and fall Chinook programs propagate an unlisted species, and thus only have incidental effects on listed species—the permits for these programs are issued under ESA section 10(a)(1)(B). The steelhead program uses natural-origin fish in the broodstock, and the permit for this program is issued under ESA section 10(a)(1)(A). Description of the programs was provided in Hatchery and Genetics Management Plans (HGMPs) submitted by the applicants.

NMFS has analyzed the effects of the hatchery programs on salmon and steelhead listed under the ESA, and has concluded that the hatchery programs would not appreciably reduce the likelihood of survival and recovery of ESA-listed species. Authorization of the activities depends upon implementation of all of the monitoring, evaluation, reporting tasks or assignments, and enforcement activities included in the permits.

Summary of Comments Received on the HGMPs

NMFS made the permit applications available for public comment on April 2, 2019 (84 FR 12594) for 30 days, as required by the ESA. No comments were received specific to the applications. However, we received a few general comments on the associated Environmental Assessment.

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: December 30, 2019.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–28471 Filed 1–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA003]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 21, 2020, from 9:30 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Four Points Sheraton, One Audubon Road, Wakefield, MA 01880; Phone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Recreational Advisory Panel will meet to discuss recreational measures for fishing year 2020 and provide recommendations to the Groundfish Committee on recreational measures for Gulf of Maine cod and Gulf of Maine haddock. They will receive an overview of the Council's 2020 priorities. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: December 31, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28531 Filed 1–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held January 28, 2020, from 1:00 p.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue NW, Suite 201, Washington, DC 20004. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230 or emailed to *dreed@ntia.gov.*

FOR FURTHER INFORMATION CONTACT: David J. Reed, Designated Federal Officer, at (202) 482–5955 or *dreed@ntia.gov;* and/or visit NTIA's website at *http://www.ntia.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes public benefits; keep wireless networks

as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *https://www.ntia.doc.gov/files/ntia/publications/csmac_signed_charter_9-30-17.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.gov/category/csmac.*

Matters to Be Considered: The Committee provides advice to the Assistant Secretary to assist in developing and maintaining spectrum management policies that enable the United States to maintain or strengthen its global leadership role in the introduction of communications technology, services, and innovation; thus expanding the economy, adding jobs, and increasing international trade, while at the same time providing for the expansion of existing technologies and supporting the country's homeland security, national defense, and other critical needs of government missions. NTIA will post a detailed agenda on its website, *http://www.ntia.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.gov/category/csmac.*

Time and Date: The meeting will be held on January 28, 2020, from 1:00 p.m. to 4:00 p.m. EST. The meeting time and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's website, *http://www.ntia.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue NW, Suite 201, Washington, DC 20004. The meeting will be open to the public and members of the press on a first-come, first-served basis as space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other auxiliary aids, are asked to notify Mr. Reed at (202) 482–5955 or *dreed@ntia.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of a meeting may send them via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in Microsoft Word and/or PDF file formats. CDs should be labeled with the name and organizational affiliation of the filer. Alternatively, comments may be submitted via electronic mail to *dreed@ntia.gov* and should also be in one or both of the file formats specified above. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at *http://www.ntia.gov/category/csmac.*

Dated: December 31, 2019.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2019–28484 Filed 1–3–20; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–403–A]

Application to Export Electric Energy; Frontera Marketing, LLC

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Frontera Marketing, LLC (Applicant or Frontera) has applied to renew its authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 5, 2020.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 24, 2015, DOE issued Order No. EA–403, which authorized Frontera Marketing, LLC. to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using the existing facilities permitted in PP–206 and other international transmission facilities appropriate for open access. That authorization expires on March 24, 2020. On December 16, 2019, Frontera filed an application (App.) with DOE for renewal of the export authorization contained in Order No. EA–403 for an additional five-year term.

Frontera states in its application that it ''does not own, operate or control any electric generation or transmission facilities.'' App. at 3. Frontera ''has entered into an exclusive sales agreement with its affiliate, Frontera Generation [Limited Partnership (Frontera Generation)], [to purchase] 100% of the portion of the energy produced at Frontera Station that is intended to be sold into Mexico.'' *Id.* In those instances where Applicant purchases power from entities other than Frontera Generation, to be exported over facilities other than the facilities permitted by Presidential Permit PP–206, the power will be purchased from other entities voluntarily, and will be surplus to the needs of the selling entity.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC

Rule 214 (18 CFR 385.214). Two (2) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Frontera's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–403–A. Additional copies are to be provided directly to Elizabeth Quirk-Hendry, Frontera Marketing, LLC, 500 Alexander Park Drive, Suite 300, Princeton, NJ 08540, and to Brooksany Barrowes and Nicholas Gladd, Kirkland & Ellis LLP, 1301 Pennsylvania Avenue NW, Washington, DC 20004.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matthew Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on December 30, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–28487 Filed 1–3–20; 8:45 am]

BILLING CODE 6450–01–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:

Docket Numbers: CP17–458–005.
Applicants: Midship Pipeline Company.
Description: Abbreviated Application for Certificate Authority of Midship Pipeline Company, LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5356.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: RP19–1618–001.
Applicants: Cadeville Gas Storage LLC.
Description: Compliance filing CGS—NAESB STANDARDS to be effective 8/1/2019.
Filed Date: 12/26/19.
Accession Number: 20191226–5101.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP19–1619–001.
Applicants: Monroe Gas Storage Company, LLC.
Description: Compliance filing MGS—NAESB STANDARDS to be effective 8/1/2019.
Filed Date: 12/26/19.
Accession Number: 20191226–5108.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP19–1620–001.
Applicants: Perryville Gas Storage LLC.
Description: Compliance filing PGS—NAESB STANDARDS to be effective 8/1/2019.
Filed Date: 12/26/19.
Accession Number: 20191226–5158.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–364–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: TETLP EPC FEB 2020 FILING to be effective 2/1/2020.
Filed Date: 12/26/19.
Accession Number: 20191226–5055.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–365–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (LSE, NESL) to be effective 1/26/2020.
Filed Date: 12/26/19.
Accession Number: 20191226–5069.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–366–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Penalty Revenue Crediting Report of Columbia Gulf Transmission, LLC under RP20–366.
Filed Date: 12/26/19.
Accession Number: 20191226–5076.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–367–000.
Applicants: Crossroads Pipeline Company.
Description: Penalty Revenue Crediting Report of Columbia Gulf Transmission, LLC under RP20–367.
Filed Date: 12/26/19.
Accession Number: 20191226–5081.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–368–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Jan 20) to be effective 1/1/2020.
Filed Date: 12/26/19.
Accession Number: 20191226–5151.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–369–000.
Applicants: Central Kentucky Transmission Company.
Description: Penalty Revenue Crediting Report of Central Kentucky Transmission Company under RP20–369.
Filed Date: 12/26/19.
Accession Number: 20191226–5181.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–370–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Penalty Revenue Crediting Report of Columbia Gas Transmission, LLC under RP20–370.
Filed Date: 12/27/19.
Accession Number: 20191227–5007.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: RP20–371–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: 2019–12–27 Neg Rate Ks RP18–922 Settlement to be effective 10/1/2019.
Filed Date: 12/27/19.
Accession Number: 20191227–5067.
Comments Due: 5 p.m. ET 1/8/20.

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: December 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28496 Filed 1–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–27–000.

Applicants: Beech Ridge Energy II LLC, Beech Ridge Energy II Holdings LLC, Southern Power Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Beech Ridge Energy II LLC, et al.
Filed Date: 12/27/19.
Accession Number: 20191227–5125.
Comments Due: 5 p.m. ET 1/17/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2906–013; ER10–2908–013; ER11–4666–004; ER11–4667–004; ER11–4669–006; ER11–4670–006; ER12–295–003; ER12–709–005; ER19–1716–001.
Applicants: Morgan Stanley Capitol Group Inc., MS Solar Solutions Corp., Morgan Stanley Energy Structuring, L.L.C, NaturEner Glacier Wind Energy 1, LLC, NaturEner Glacier Wind Energy 2, LLC, NaturEner Rim Rock Wind Energy, LLC, Naturener Montana Wind Energy, LLC, NaturEner Power Watch, LLC, NaturEner Wind Watch, LLC.
Description: Updated Market Power Analysis for the Northwest Region and Notice of Change in Status of Morgan Stanley Capital Group Inc., et al.
Filed Date: 12/27/19.
Accession Number: 20191227–5128.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER10–3052–003.
Applicants: Rock River I, LLC.
Description: Updated Market Power Analysis for Northwest Region of Rock River I, LLC.
Filed Date: 12/27/19.
Accession Number: 20191227–5099.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER10–3245–010; ER10–3249–010;ER10–3250–010; ER11–2639–011.
Applicants: Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC.
Description: Updated Market Power Analysis for Northwest Region of Foote Creek II, LLC, et al.
Filed Date: 12/27/19.
Accession Number: 20191227–5124.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER16–1255–015; ER15–1579–016; ER15–1582–017; ER15–1914–018; ER15–2679–014; ER15–2680–014; ER15–760–017; ER15–762–018; ER16–1609–008; ER16–1738–012; ER16–1901–012; ER16–1955–012; ER16–1956–012; ER16–1973–012; ER16–2201–011; ER16–2224–011; ER16–2541–011; ER16–2578–012; ER16–468–012; ER16–474–013; ER16–890–013; ER17–1864–010; ER17–1871–010; ER17–1909–010; ER17–306–011; ER17–544–011; ER18–1667–005; ER18–2327–004; ER18–2492–006; ER19–2527–001; ER19–846–005; ER19–847–005.
Applicants: Antelope Big Sky Ranch LLC, Antelope DSR 1, LLC, Antelope DSR 2, LLC, Antelope DSR 3, LLC, Antelope Expansion 2, LLC, Bayshore Solar A, LLC, Bayshore Solar B, LLC, Bayshore Solar C, LLC, Beacon Solar 1, LLC, Beacon Solar 3, LLC, Beacon Solar 4, LLC, Central Antelope Dry Ranch C LLC, Elevation Solar C LLC, FTS Master Tenant 1, LLC, FTS Master Tenant 2, LLC, ID Solar 1, LLC, Latigo Wind Park, LLC, North Lancaster Ranch LLC, Prevailing Wind Park, LLC, Pioneer Wind Park I LLC, Riverhead Solar Farm, LLC, San Pablo Raceway, LLC, Sandstone Solar LLC, Sierra Solar Greenworks LLC, Solverde 1, LLC, Summer Solar LLC, Western Antelope Blue Sky Ranch A LLC, Western Antelope Blue Sky Ranch B LLC, Western Antelope Dry Ranch LLC, 65HK 8me LLC, 67RK 8me LLC, 87RL 8me LLC.
Description: Triennial Market Power Analysis for the Northeast Region of Antelope Big Sky Ranch LLC, et. al.
Filed Date: 12/27/19.
Accession Number: 20191227–5135.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–692–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–12–27 TCA Amendment to Add Horizon West Transmission, LLC to be effective 2/28/2020.
Filed Date: 12/27/19.
Accession Number: 20191227–5068.
Comments Due: 5 p.m. ET 1/17/20.

Docket Numbers: ER20–693–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Tri-State's Other Member Agreements #4 to be effective 3/23/2020.
Filed Date: 12/27/19.
Accession Number: 20191227–5069.
Comments Due: 5 p.m. ET 1/17/20.

Docket Numbers: ER20–694–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Tri-State's Other Member Agreements #5 to be effective 3/23/2020.
Filed Date: 12/27/19.
Accession Number: 20191227–5076.
Comments Due: 5 p.m. ET 1/17/20.

Docket Numbers: ER20–695–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Tri-State's Other Member Agreements #6 to be effective 3/23/2020.
Filed Date: 12/27/19.
Accession Number: 20191227–5086.
Comments Due: 5 p.m. ET 1/17/20.

Docket Numbers: ER20–696–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits 6 ECSAs, Service Agreement Nos. 5445, 5446, 5447, 5501, 5502, 5503 to be effective 2/28/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5027.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–697–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–30_SA 2013 Community Wind North LLC–NSP GIA (G586) to be effective 12/11/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5029.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–698–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits 2 ECSAs, Service Agreement Nos. 5341 and 5511 to be effective 2/28/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5030.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–699–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 5546; Queue No. AE2–056 to be effective 12/11/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5042.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–700–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Blackbear Alabama Solar1 (Blackbear Solar) LGIA Filing to be effective 12/16/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5066.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–701–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 5554; Queue No. AE1–015 to be effective 12/10/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5067.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–702–000.
Applicants: ConocoPhillips Company.
Description: § 205(d) Rate Filing: Change of Seller Category Status to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5073.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–703–000.
Applicants: 41MB 8me LLC.
Description: Baseline eTariff Filing: 41MB 8me MBR Tariff to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5075.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–704–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 5553; Queue No. AE1–012 to be effective 12/10/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5078.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–705–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–12–30 Transferred Frequency Response Agreement with Bonneville to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5085.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–706–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–12–30 Transferred Frequency Response Agreement with Tucson Electric Power to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5087.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–707–000.
Applicants: Eastern Shore Solar LLC.
Description: § 205(d) Rate Filing: Initial Reactive Rate Schedule to be effective 12/31/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5091.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–708–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 5547; Queue No. AE2–081 to be effective 12/9/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5098.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–709–000.
Applicants: Heartland Generation Ltd.
Description: Compliance filing: Notice of Succession of Rate Schedule Tariff and Notice of Change in Status to be effective 12/30/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5101.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–710–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Jan 2020 Membership Filing to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5114.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–711–000.
Applicants: Cambria Wind, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 1/31/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5117.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–712–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1768R1 American Electric Power NITSA NOA to be effective 12/1/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5127.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–713–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2881R9 City of Chanute, KS NITSA NOA to be effective 12/1/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5138.
Comments Due: 5 p.m. ET 1/20/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD20–1–000.
Applicants: North American Electric Reliability Corporation, Northeast Power Coordinating Council, Inc.
Description: Joint Petition of North American Electric Reliability Corporation and the Northeast Power Coordinating Council, Inc. for Approval of Proposed Regional Reliability Standard.
Filed Date: 12/23/19.
Accession Number: 20191223–5365.
Comments Due: 5 p.m. ET 1/29/20.

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: December 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28495 Filed 1–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–32–000]

Notice of Request Under Blanket Authorization; Gulf South Pipeline Company, LP

Take notice that on December 20, 2019, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed a prior notice application pursuant to sections 157.205(b), 157.208(c), 157.210, and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Gulf South's blanket certificate issued in Docket No. CP82–430–000. Gulf South requests authorization to improve the efficiency and reliability of its McComb Compressor Station located on Gulf South's Index 130 mainline in Walthall County, Mississippi, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Gulf South proposes to (1) retire in-place one of the seven existing reciprocating compressor units (Unit 3) at the station, as it has suffered mechanical damage; (2) install one new Solar Taurus 70–T10802S Centrifugal Compressor (T70) package, including its required ancillary, auxiliary equipment and yard and station piping; and (3) place three of the six remaining reciprocating compressor units on standby.

Gulf South states, that only three existing reciprocating gas compressors are operated with the T70 during the station's full load capacity, all located in Walthall County, Mississippi. The proposed modifications will result in an increase of certificated capacity of 48,000 dekatherms per day (Dth/d) from Harrisville receipts on Index 130 to deliveries on Gulf South's existing 24-inch Index 133 system. One primary improved point would be Gulf South's

Transco Walthall Interconnect in south Mississippi.

Any questions regarding this application should be directed to Juan Eligio Jr. Supervisor, Regulatory Affairs, Gulf South Pipeline, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046 or phone (713) 479–3480, or by email at Juan.*Eligio@bwpipelines.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: December 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28497 Filed 1–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–16–000]

Notice of Petition for Declaratory Order; Tri-State Generation and Transmission Association, Inc.

Take notice that on December 23, 2019, pursuant to sections 205 and 206 of the Federal Power Act,[1] Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), Tri-State Generation and Transmission Association, Inc. (Petitioner), filed a petition for declaratory order requesting that the Commission terminate controversy and remove uncertainty regarding the La Plata Electric Association, Inc. and United Power, Inc. complaints, subject to the Commission's regulatory jurisdiction under sections 205 and 206 of the Federal Power Act, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

[1] 16 U.S.C. 824d, 824e (2019).

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 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 January 13, 2020.

Dated: December 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28498 Filed 1–3–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–89–Region 9]

Public Water System Supervision Program Revision for the State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Nevada revised its approved Public Water System Supervision (PWSS) Program under the federal Safe Drinking Water Act (SDWA) by adopting the Lead & Copper Rule Minor and Short-Term Revisions. The Environmental Protection Agency (EPA) has determined that these revisions by the State of Nevada are no less stringent than the corresponding Federal regulations and otherwise meet applicable SDWA primacy requirements. Therefore, the EPA intends to approve these revisions to the State of Nevada's PWSS Program.

DATES: Request for a public hearing must be received on or before February 5, 2020.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30

a.m. and 4:00 p.m., Monday through Friday, except official State holidays and official Federal holidays, at the following offices: Nevada Department of Environmental Protection, Admin Office, 901 South Stewart Street, Suite 4001, Carson City, NV 89701; United States Environmental Protection Agency, Region 9, Drinking Water Section, 75 Hawthorne Street (WTR4–1), San Francisco, CA 94105.

Documents relating to this determination are also available online at *https://ndep.nv.gov/posts/category/public-notices* for inspection.

FOR FURTHER INFORMATION CONTACT: Jacob Jenzen, EPA Region 9, Drinking Water Section, at the Region 9 address provided above; via telephone at (415) 972–3570; or via email address at *Jenzen.Jacob@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background. The EPA approved the State of Nevada's original application for PWSS program primary enforcement authority on February 27, 1978 (43 FR 8030). Primacy states such as Nevada must adopt and submit for approval to EPA all new and revised national primary drinking water regulations. Since that initial approval, EPA has worked with Nevada to review and approve various revisions to Nevada's primacy program. For the revisions covered by this action, the EPA promulgated revisions to the Federal Lead and Copper Rule with the Minor Revisions on January 12, 2000 (65 FR 1950) and the Short-Term Revisions on October 10, 2007 (72 FR 5778). Nevada originally incorporated by reference the requirements of the federal Lead and Copper Rule, 40 CFR part 141 Subpart I, directly into the Nevada Administrative Code (NAC), and EPA approved those revisions on July 21, 1996 (61 FR 29748). Nevada updated the NAC with a rulemaking made effective July 22, 2010 that expanded the incorporation by reference of the Federal Lead and Copper Rule to include the Minor and Short-Term Revisions, with language sufficient to meet the federal requirements. These are the primacy revisions that the EPA Region 9 tentatively approves as part of the Nevada's PWSS Program.

Public Process. Any interested party may request a public hearing on this determination. A request for a public hearing must be submitted by February 5, 2020, to the Regional Administrator of EPA Region 9, to the address shown above. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a substantial request for a public hearing is made by February 5, 2020, EPA Region 9 will hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's or organization's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely and substantive request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, the determination at issue in this notice, the EPA's approval shall become final and effective on February 5, 2020, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: December 17, 2019.

Deborah Jordan,

Acting Regional Administrator, EPA, Region 9.

[FR Doc. 2019–28441 Filed 1–3–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than January 20, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Amanda Leigh Palmer, Erie, Colorado;* to acquire voting shares of Wheeler County Bancshares, Inc., and thereby indirectly acquire voting shares of Ericson State Bank, both of Ericson, Nebraska.

Board of Governors of the Federal Reserve System, December 31, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–28481 Filed 1–3–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATE: The meeting will be held on February 19, 2020, 11:00 a.m. to 1:00 p.m., EST.

ADDRESS: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; and the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30329–4017; Telephone: (513)

533–6800; Toll Free: 1 (800) CDC–INFO; Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on February 12, 2018, and will terminate on February 12, 2020.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; Plans for the April 2020 Advisory Board Meeting; and Advisory Board Correspondence. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for 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. 2019–28451 Filed 1–3–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Center for State, Tribal, Local, and Territorial Support (CSTLTS), CDC/ATSDR Tribal Advisory Committee (TAC) Meeting

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC)/Agency for Toxic Substances and Disease Registry (ATSDR), announces the Winter 2020 CDC/ATSDR Tribal Advisory Committee (TAC) meeting. The meeting is being hosted by CDC/ATSDR, in-person only, and is open to the public, except for certain hours set aside for tribal caucus. Attendees must pre-register for the event by Friday, February 21, 2020, at the following link: *https://www.cdc.gov/tribal/meetings.html.*

DATES: The meeting will be held March 12, 2020, 9:30 a.m. to 5:30 p.m., EDT; and March 13, 2020, 9:30 a.m. to 5:30 p.m., EDT.

ADDRESSES: CDC, Chamblee Campus, Building 106, Rooms 1A/1B, 4770 Buford Highway, Atlanta, GA 30341–3717.

FOR FURTHER INFORMATION CONTACT: CAPT Carmen Clelland, PharmD, MPA, MPH, Director, Office of Tribal Affairs and Strategic Alliances, Center for State, Tribal, Local, and Territorial Support, CDC, 4770 Buford Highway, Mailstop V18–4, Atlanta, GA 30341–3717; Telephone: (404) 498–2205; Email: *cclelland@cdc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held in accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments.

Purpose: The purpose of the TAC meeting is to advance CDC/ATSDR support for and collaboration with American Indian and Alaska Native (AI/AN) tribal nations and to improve the health of AI/AN people by pursuing goals that include assisting in eliminating the health disparities faced by tribal nations; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of AI/AN people; and promoting health equity for all AI/AN people and communities. To advance these goals, CDC/ATSDR conducts government-to-government meetings with elected tribal officials or their authorized representatives. These meetings offer open and free exchange of information and opinion among parties that leads to mutual understanding.

Information about the TAC, CDC/ATSDR's Tribal Consultation Policy, and previous meetings is available at *https://www.cdc.gov/tribal/consultation-support/tribal-consultation/sessions.html.*

Matters To Be Considered: The agenda will include discussions on tribal priorities for CDC and ATSDR, public health capacity in Indian Country, and programmatic highlights. AI/AN tribal nations also will have an opportunity to present testimony about tribal health issues. All tribal leaders are encouraged to submit written testimony by 5:00 p.m. (EST) Friday, February 21, 2020, to Captain Carmen Clelland, Director, Office of Tribal Affairs and Strategic Alliances, via mail at 4770 Buford Highway, Mailstop V18–4, Atlanta, GA 30341–3717, or by email to *TribalSupport@cdc.gov.* Guidance for developing tribal testimony for CDC/ATSDR is available at *www.cdc.gov/tribal/consultation-support/tac/index.html.* Based on the number of tribal leaders giving testimony and the time available, it may be necessary to limit the time for each presenter. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for 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. 2019–28450 Filed 1–3–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Healthcare Infection Control Practices Advisory Committee (HICPAC). This meeting is open to the public, limited only by the space available. The meeting room accommodates up to 120 people. The public is also welcome to listen to the meeting via teleconference at 1–800–857–2850, passcode: 2622054; 100 teleconference lines are available.

DATES: The meeting will be held on March 5, 2020, 9:00 a.m. to 5:00 p.m., EST, and March 6, 2020, 9:00 a.m. to 12:00 p.m., EST.

ADDRESSES: Centers for Disease Control and Prevention, Global Communications Center, Building 19, Auditorium B, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027 and teleconference at 1–800–857–2850, passcode: 2622054.

FOR FURTHER INFORMATION CONTACT: Koo-Whang Chung, M.P.H., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, l600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027; Telephone: (404) 498–0730; Email: *hicpac@cdc.gov.*

SUPPLEMENTARY INFORMATION: Time will be available for public comment. The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed below. The deadline for receipt of written public comment is February 20, 2020. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length and delivered in 3 minutes or less. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments received in advance of the meeting will be included in the official record of the meeting. Registration is required to attend in person or on the phone. Interested parties must be processed in accordance with established federal policies and procedures and may register at *https://www.cdc.gov/hicpac.*

Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion (DHQP), the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, and the Secretary, Health and Human Services, regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Considered: The agenda will include updates on CDC's activities for prevention of healthcare-associated infections. It will also include updates from the following HICPAC workgroups: The Healthcare Personnel Guideline Workgroup; the Neonatal Intensive Care Unit (NICU) Guideline Workgroup; the National Healthcare Safety Network (NHSN) Workgroup; and the Bloodstream Infection Workgroup. The agenda also includes updates on CDC and DHQP activities. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for 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. 2019–28449 Filed 1–3–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10237]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by February 5, 2020.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA=Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a currently approved; *Title of Information Collection:* Applications for Part C Medicare Advantage, 1876 Cost Plans, and Employer Group Waiver Plans to Provide Part C Benefits; *Use:* This information collection includes the process for organizations wishing to provide healthcare services under MA plans. These organizations must complete an application annually (if required), file a bid, and receive final approval from CMS. The MA application process has two options for applicants that include (1) request for new MA product or (2) request for expanding the service area of an existing product. CMS utilizes the application process as the means to review, assess and determine if applicants are compliant with the current requirements for participation in the MA program and to make a decision related to contract award. This collection process is the only mechanism for organizations to complete the required MA application process. The application process is open to all health plans that want to participate in the MA program. The application is distinct and separate from the bid process, and CMS issues a determination on the application prior to bid submissions, or before the first Monday in June.

Collection of this information is mandated by the Code of Federal Regulations, MMA, and CMS regulations at 42 CFR 422, subpart K, in ''Application Procedures and Contracts for Medicare Advantage Organizations.'' In addition, the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) further amended titles XVII and XIX of the Social Security Act. *Form Number:* CMS–10237 (OMB control number: 0938–0935); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 435; *Total Annual Responses:* 435; *Total Annual Hours:* 6,754. (For policy questions regarding this collection contact Keith Penn-Jones at 410–786–3104.)

Dated: December 31, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–28477 Filed 1–3–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on March 4, 2020, from 8:30 a.m. to 5:10 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. For those unable to attend in person, the meeting will also be webcast and will be available at the following link: *https://collaboration.fda.gov/vrbpac030420/.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Kathleen Hayes or Monique Hill, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6307C, Silver Spring, MD 20993–0002, 301–796–7864, *Kathleen.Hayes@fda.hhs.gov,* or 301–796–4620, *monique.hill@fda.hhs.gov,* respectively; or the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On March 4, 2020, under Topic I, the Center for Biologics Evaluation and Research's (CBER) VRBPAC will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2020 to 2021 influenza season. Also, on March 4, 2020, under Topic II, the committee will meet in open session to hear an overview of the research programs in the Laboratory of Respiratory and Special Pathogens (LRSP), Division of Bacterial, Parasitic, and Allergenic Products, Office of Vaccines Research and Review, CBER.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 26, 2020. Oral presentations from the public will be scheduled between approximately 12:50 p.m. and 1:35 p.m. for the influenza strain selection portion of the meeting and 3:55 p.m. to 4:10 p.m. for the overview portion of the LRSP Site Visit. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 18, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 19, 2020.

Closed Committee Deliberations: On March 4, 2020, from 4:10 p.m. to 5:10 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The recommendations of the advisory committee regarding the progress of the investigator's research will, along with other information, be used in making personnel and staffing decisions regarding individual scientists. We believe that public discussion of these recommendations on individual scientists would constitute an unwarranted invasion of personal privacy.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kathleen Hayes (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 31, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28508 Filed 1–3–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2809]

Advisory Committee; Patient Engagement Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Patient Engagement Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Patient Engagement Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until October 6, 2021.

DATES: Authority for the Patient Engagement Advisory Committee would have expired on October 6, 2019, unless the Commissioner had formally determined that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Letise Williams, Office of the Center Director, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5407, Silver Spring, MD 20993–0002, 301–796–8398, *Letise.Williams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3 FDA is announcing the renewal of the Patient Engagement Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Patient Engagement Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective devices for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility. The Committee provides advice to the Commissioner of Food and Drugs on complex issues relating to medical devices, the regulation of devices, and their use by patients. Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes and device-related quality of life or health status issues are among the topics that may be considered by the Committee. The Committee provides relevant skills and perspectives to improve communication of benefits, risks, and clinical outcomes, and increase integration of patient perspectives into the regulatory process for medical devices. It performs its duties by identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy.

Pursuant to its Charter the Committee shall consist of a core of nine voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities who are knowledgeable in areas such as clinical research, primary care patient experience, healthcare needs of patient groups in the United States, or are experienced in the work of patient and health professional organizations, methodologies for eliciting patient preferences, and strategies for communicating benefits, risks and clinical outcomes to patients and research subjects. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. The Commissioner or designee shall also have the authority to select from a group of individuals nominated by industry to serve temporarily as nonvoting members who are identified with industry interests. The number of temporary members selected for a particular meeting will depend on the meeting topic.

The Commissioner or designee shall also have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve

temporarily as voting members when: (1) Expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members), or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/PatientEngagementAdvisoryCommittee/default.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: December 31, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28518 Filed 1–3–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5888]

Advisory Committee; Pharmaceutical Science and Clinical Pharmacology Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the renewal of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Pharmaceutical Science and Clinical Pharmacology Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until January 22, 2022.

DATES: Authority for the Pharmaceutical Science and Clinical Pharmacology Advisory Committee will expire on January 22, 2022, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jay Fajiculay, Division of Advisory Committee and Consultant Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *ACPS-CP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3, FDA is announcing the renewal of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Pharmaceutical Science and Clinical Pharmacology Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The committee reviews and evaluates scientific, clinical, and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases, the quality characteristics which such drugs purport or are represented to have, and as required, any other product for which FDA has regulatory responsibility, and make appropriate recommendations to the Commissioner. The committee may also review Agency sponsored intramural and extramural biomedical research programs in support of FDA's drug regulatory responsibilities and its critical path initiatives related to improving the efficacy and safety of drugs and improving the efficiency of drug development.

Pursuant to its Charter, the Pharmaceutical Science and Clinical Pharmacology Advisory Committee shall consist of a core of 14 voting members including two Chairpersons. Members and Chairpersons are selected by the Commissioner or designee from among authorities knowledgeable in the fields of pharmaceutical sciences (pharmaceutical manufacturing, bioequivalence research, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, molecular biology, immunology, and microbiology) and clinical pharmacology (dose-response, pharmacokinetics-pharmacodynamics, modeling and simulation, pharmacogenomics, clinical trial design, pediatrics and special populations, and innovative methods in drug development), biostatistics, related biomedical and pharmacological specialties, current good manufacturing practices, and quality systems implementation. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the committee may include up to three non-voting members who are identified with industry interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/pharmaceutical-science-and-clinical-pharmacology-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: December 31, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28530 Filed 1–3–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 84 FR 49535–49540 dated September 20, 2019).

HRSA is making changes within their Healthcare Systems Bureau, Division of National Hansen's Program, to improve the delivery of patient services, increase management and administrative efficiencies, and optimize use of staff resources within the Division.

Specifically this reorganization updates the functions of the Division of National Hansen's Disease Program (RRH).

Chapter RRH—Division of National Hansen's Disease Program

Section RRH.20 Function

Delete the functional statement for the Division of National Hansen's Disease Program (RRH) in its entirety and replace with the following:

Division of National Hansen's Disease Program (RRH)

The National Hansen's Disease Program (NHDP) in accordance with regulations and the Public Health Service (PHS) Act, Sec. 320 as amended by Public Law 105–78, Sec. 211, (1) provides care and treatment for persons with Hansen's Disease (leprosy), including managing a national short-term and outpatient health care delivery program providing specialized services to persons with Hansen's Disease; (2) conducts and promotes the coordination of research (including clinical research), investigations, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of Hansen's disease and other mycobacterial diseases and complications related to such diseases; (3) conducts training in the diagnosis and management of Hansen's disease and related complications; (4) provides education and training to staff from the outpatient Hansen's Disease Clinics and to private physicians; (5) operates and oversees the National Hansen's Disease Museum and Cemetery; (6) consults on the coordination of activities within HRSA and HHS, and with other federal agencies, state and local governments, and other public and private organizations involved in Hansen's Disease activities; (7) manages a network of contracted outpatient clinics providing care to persons with Hansen's Disease; and (8) manages and coordinates the National Hansen's Disease Program's administrative and operational activities with HRSA and HHS, other federal agencies, state and local governments, and other public and private organizations involved in Hansen's Disease activities.

Section RRH.30, Delegation of Authority

All delegations of authority and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, if allowed, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

(Authority: 44 U.S.C. 3101)

Dated: December 18, 2019.

Thomas J. Engels,

Administrator.

[FR Doc. 2019–28267 Filed 1–3–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA–1903–N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—July Through September 2019

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from July through September 2019. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Jon Dorman, by telephone at (571) 457–7220, or by email at *jon.dorman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an Independent Review Entity (IRE) for Part C organization determination appeals, or by PDPSs and an IRE for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act

are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the three-month period of July through September 2019. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

III. How To Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

IV. OCPM Releases for July Through September 2019

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were issued or revised in the three-month period of July through September 2019. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

General OCPM Updates

OMHA reorganized its Program Evaluation and Policy Division and Field Operations Division into two branches of a new Appeals Policy and Operations Division. References to the prior division names in OCPM chapters 6, 7, 11, 18, and 20 were updated to reflect the change in OMHA's organizational structure.

CMS's final rule entitled ''Medicare Program; Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures'' was published in the May 7, 2019 **Federal Register** (84 FR 19855) with an effective date of July 8, 2019. This final rule made a number of changes to help streamline the appeals process and reduce administrative burden, and to help ensure the regulations are clearly arranged and written to give stakeholders a better understanding of the appeals process. Among other things, these regulations corrected and clarified cross references, definitions, and terminology. To implement these changes, revisions were made to footnotes and citations in OCPM 9.3.6.1, 11.3.6.3, 17.1.5, 17.1.5.3 and 17.2.2.

OCPM Chapter 4: Parties—Section 4.4.1.1

This chapter was initially released on March 29, 2019, and was included in a quarterly notice published in the May 3, 2019 **Federal Register** (84 FR 19086). Section 4.4.1.1 of this chapter states that a Unified Program Integrity Contractor (UPIC) cannot elect party status in an appeal, and may only participate as a non-party. As initially published, this section cited to CMS's Medicare Program Integrity Manual (MPIM), internet-only manual publication 100–08, chapter 4, section 4.8.2, which previously stated that a Zone Program Integrity Contractor (ZPIC) could not elect party status in an appeal, and section 4.1, which stated that all references to ZPICs shall also apply to UPICs, unless otherwise specified in the UPIC Statement of Work (SOW). Effective October 22, 2018, CMS revised the MPIM to directly state that a UPIC cannot invoke party status, and can only participate in OMHA proceedings as a non-party. This revision to OCPM 4.4.1.1 updates a footnote in this section to reflect the CMS manual's revised language. This revision does not change the way that OMHA interprets or implements the underlying policy that a UPIC cannot elect party status.

OCPM Chapter 5: Representatives—Section 5.2.1.2

This chapter was initially released on July 27, 2018, and was included in a quarterly notice published in the November 14, 2018 **Federal Register** (83 FR 56859). Section 5.2.1.2 of this chapter lists the required elements for a valid appointment of representative. This revision updates the required elements in accordance with revisions to 42 CFR 405.910(c) that became effective on July 8, 2019 (84 FR 19857 through 19858), and corresponding updates to CMS's Medicare Claims Processing Manual (MCPM), internet-only manual publication 100–04, chapter 29, section 270.1.2.

OCPM Chapter 6: CMS, CMS Contractor, and Plan Roles—Sections 6.5.3.1, 6.5.4.1, 6.5.10, 6.7.3.1, 6.7.3.3, 6.7.4

This chapter was initially released on July 27, 2018, and was included in a quarterly notice published in the November 14, 2018 **Federal Register** (83 FR 56859). Section 6.5.3.1 of this chapter previously stated that in a Part A, Part B, or Part C appeal, CMS or a CMS contractor may elect to be a party or non-party participant no later than 10 calendar days after ''receiving the notice of hearing.'' This revision implements changes to 42 CFR 405.1010(b)(3)(ii) and 405.1012(a)(1) (84 FR 19862), and clarifies that the notice of hearing may be received by the Qualified Independent Contractor (QIC) or another contractor designated by CMS to receive the notice of hearing. Section 6.5.4.1 of this chapter is revised to clarify that CMS has designated the Administrative Qualified Independent Contractor (AdQIC) to receive notices of hearing. Sections 6.5.10 and 6.7.4 of this chapter previously stated written CMS or contractor elections and requests and evidentiary submissions must be sent to the parties who were sent a copy of the

reconsideration, if no hearing has been scheduled; or the parties who were sent a copy of the notice of hearing, if a hearing has been scheduled. This revision implements changes to 42 CFR 405.1010(b)(1) (84 FR19862), and identifies the copy requirement for appeals where an appeal has been escalated to OMHA, but has not been scheduled. Sections 6.7.3.1 and 6.7.3.3 of this chapter are revised to clarify that an attorney adjudicator may also grant additional time for submissions.

OCPM Chapter 9: Request and Correspondence Intake, Docketing, and Assignment—Section 9.3.4

This chapter was initially released on February 1, 2019, and was included in a quarterly notice published in the May 3, 2019 **Federal Register** (84 FR 19086). Section 9.3.4 of this chapter describes how OMHA appeal numbers are assigned for new appeals. This revision adds a note clarifying that if a single request for hearing or review identifies more than one reconsideration number, OMHA will process each reconsideration number as a separate request for purposes of assigning appeal numbers, but will assign the appeals to the same adjudicator to the extent possible for administrative efficiency.

OCPM Chapter 14: Scheduling and Noticing for Prehearing Conferences and Hearings—Sections 14.5.4, 14.6.7.4

This chapter was initially released on September 28, 2018, and was included in a quarterly notice published in the November 14, 2018 **Federal Register** (83 FR 56859). Section 14.5.4 is revised to clarify that CMS has designated the AdQIC to receive notices of hearing. Section 14.6.7.4 of this chapter describes when the hearing format may be changed. Previously, this section stated that if a party other than an unrepresented beneficiary who filed a request for hearing requests a VTC hearing or in-person hearing, concurrence of the Associate Chief ALJ was necessary to grant the request. This revision clarifies that the concurrence of the Associate Chief ALJ is only required to grant a request for an in-person hearing.

OCPM Chapter 18: Requests for Information and Remands—Sections 18.1.1.2, 18.1.5, 18.1.7.2, 18.2.2, 18.4.3

This chapter was initially released on November 30, 2018, and was included in a quarterly notice published in the January 31, 2019 **Federal Register** (84 FR 763). Sections 18.1.1.2 and 18.1.5 of this chapter describe how an OMHA adjudicator may issue a request for information if he or she believes that the written record is missing information essential to resolving the issues on appeal. This revision clarifies that a request for information may be made for an official copy of a dismissal of a request for redetermination or reconsideration. Section 18.1.7.2 of this chapter lists actions an OMHA adjudicator may take if the missing information is not submitted within the applicable time frame. This revision added a note that a remand is authorized when the entity that conducted the reconsideration does not respond to a request for a case file, or does respond but is unable to furnish the requested case file. This note further states that case file requests are not requests for information made under 42 CFR 405.1034(a) or 423.2034(a). Rather, as discussed at 84 FR 19866, they are made in accordance with joint operating procedures between OMHA and the entity that conducted the reconsideration. Section 18.2.2 of this chapter explains that if the missing information is not provided, an OMHA adjudicator may remand the appeal. This revision clarifies that if an official copy of a dismissal of a request for redetermination or reconsideration is not received, an OMHA adjudicator may issue a remand to the entity that conducted the reconsideration, or its successor, to reconstruct the record or, if unable to do so, initiate a new appeal adjudication. Section 18.4.3 of this chapter explains the circumstances under which a remand may be reviewed. This revision clarifies that a remand issued because an official copy of a dismissal of a request for redetermination or reconsideration or case file cannot be obtained from the QIC may be subject to review by the Chief ALJ or designee in accordance with revisions to 42 CFR 405.1056(g) and 423.2056(g) that became effective on July 8, 2019 (84 FR 19866).

OCPM Chapter 20: Post-Adjudication Actions—Sections 20.7.1.3, 20.7.5.6, 20.7.7.3, 20.8.4, 20.8.5.6, 20.8.6.1, 20.8.7.2, 20.11.4

This chapter was initially released on May 25, 2018, and was included in a quarterly notice published in the August 7, 2018 **Federal Register** (83 FR 38700). Sections 20.7.1.3 and 20.7.5.6 of this chapter previously stated a dismissal may be vacated within 6 months of the date of the notice of dismissal. This revision updates the time frame from 6 months to 180 calendar days in accordance with revisions to 42 CFR 405.1052(e) and 423.2052(e) that became effective on July 8, 2019 (84 FR 19857). Section 20.7.7.3 of this chapter updates the form number for the Order Vacating Dismissal from OMHA–180 to OMHA–181. Section 20.8.4 of this chapter is revised to clarify that a request for review of a remand may only be filed with OMHA Central Operations. Section 20.8.5.6 of this chapter is revised to clarify that requests for a copy of administrative records are made directly through OMHA Central Operations. Section 20.8.6.1 of this chapter removed an incorrect statement that an OMHA adjudicator must make a request for information before issuing a remand for a missing case file. The remand order is authorized under 42 CFR 405.1056(a)(2). Chapter 20.8.7.2 of this chapter is revised to clarify that the re-established appeal number is used with the Notice of Vacated Remand and Order Vacating Remand. Chapter 20.11.4 of this chapter describes how an adjudicator responds to a Council remand order for missing evidence or information. Previously, this section stated that if the adjudicator is able to furnish the requested evidence or information, the complete administrative record was returned to the Council at the address specified in the Council's remand order. This revision states the records shall be returned to the Council at the address specified in OCPM 19.1.2.

Dated: December 31, 2019.

Karen W. Ames,

Executive Director, Office of Medicare Hearings and Appeals.

[FR Doc. 2019–28504 Filed 1–3–20; 8:45 am]

BILLING CODE 4150–46–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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; HHS–NIH–CDC SBIR PHS 2020–1 Topic 78: Sequence-based Assays to Quantify the Replicon-Competent HIV Reservoir.

Date: February 3, 2020.

Time: 2:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G13B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–7616, (240) 669–5048, *yong.gao@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: December 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28435 Filed 1–3–20; 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: Allergy, Immunology, and Transplantation Research Committee (AITC).

Date: February 26–27, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesdan Hotel, Tapestry Collection by Hilton, Ballroom D, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/ Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5060, *James.snyder@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: December 30, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28432 Filed 1–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee: NIDCR Special Grants Review Meeting (DSR).

Date: February 20–21, 2020.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW, Washington, DC 20001.

Contact Person: Latarsha J. Carithers, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 31, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28519 Filed 1–3–20; 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; ZAI1–AWA–M–M1 PAR–16–413 NIAID Investigator Initiated Program Project.

Date: January 23, 2020.

Time: 9:00 a.m. to 1:00 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: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, National Institutes of Allergies and Infectious Diseases, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, (240) 627–3390 *aabbey@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: December 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28433 Filed 1–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, Conference Room Montgomery, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28437 Filed 1–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; 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 Fogarty International Center Advisory Board.

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: Fogarty International Center Advisory Board.

Date: February 10–11, 2020.

Closed: February 10, 2020, 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Lawton Chiles International House, Conference Room, Building 16, Bethesda, MD 20892.

Open: February 11, 2020, 9:00 a.m. to 3:00 p.m.

Agenda: Update and discussion of current and planned FIC activities.

Place: National Institutes of Health, Lawton Chiles International House, Conference Room, Building 16, Bethesda, MD 20892.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *kristen.weymouth@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.fic.nih.gov/About/Advisory/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: December 31, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28515 Filed 1–3–20; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee, February 2020 MID–B Review Committee Meeting.

Date: February 13–14, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, The Ventana Room, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2676, *ebuczko1@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: December 31, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28517 Filed 1–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Review of NIGMS Postdoctoral Research Associate Training (PRAT) Applications.

Date: March 16, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Conference Room Embassy, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 594–3907, *pikebr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28439 Filed 1–3–20; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PAR–16–413, NIAID Investigator Initiated Program Project Applications (P01).

Date: January 21, 2020.

Time: 8:00 a.m. to 5:00 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: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute for Allergy and Infectious Disease, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, (240) 627–3390, *aabbey@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PAR–AI–18–022: Advancing mAbs to Achieve a Drug-free Sustained HIV Virologic Remission.

Date: February 4, 2020.

Time: 2:00 p.m. to 3:30 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: David C. Chang, Ph.D., Scientific Review Officer, AIDS Research Review Branch, Scientific Review Program Division of Extramural Activities, National Institutes of Health, NIAID, 5601 Fishers Lane, Rm. 3E72B, Rockville, MD 20892, (301) 594–4218, *changdac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28434 Filed 1–3–20; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee, Microbiology and Infectious Diseases Research Committee (MID).

Date: June 4–5, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, Tenleytown Ballroom, 4300 Military Road, Washington, DC 20015.

Contact Person: Amir E. Zeituni, Ph.D., Scientific Review Program, Division of Extramural Activities, SRP, RM 3G51, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20852–9823, (301) 496–2550, *amir.zeituni@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: December 30, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28436 Filed 1–3–20; 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: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: January 23–24, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Janita N. Turchi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–4005, *turchij@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: December 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28431 Filed 1–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Board of Scientific Counselors, National Institute of Mental Health. The meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: January 29–31, 2020.

Time: January 29, 2020, 5:30 p.m. to 8:55 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, Regency IV Conference Room, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 30, 2020, 8:45 a.m. to 6:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Time: January 31, 2020, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 2–4, 2020.

Time: June 02, 2020, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Time: June 03, 2020, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Time: June 04, 2020, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: October 20–22, 2020.

Time: October 20, 2020, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Time: October 21, 2020, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Time: October 22, 2020, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, GE 620/630/640, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D. Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 31, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28516 Filed 1–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

CISA Reporting Forms

AGENCY: Cybersecurity Division (CSD), Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; revision, 1670–0037.

SUMMARY: DHS CISA CSD will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this ICR for a 60-day public comment period. No comments were received by CISA. Following the 60-day notice, CISA refined the reporter information section of the CISA Incident Reporting Form to improve the clarity, accuracy, and effectiveness of the data being collected. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until February 5, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to the OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1670–0037.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to

this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Kenneth Lee at 703.705.6634 or at *fed_ir_update@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 2209 of the Homeland Security Act, as amended, established a national cybersecurity and communications integration center to function as ''a Federal civilian interface for the multi-directional and cross-sector sharing of information related to cyber threat indicators, defensive measures, cybersecurity risks, incidents, analysis, and warnings for Federal and non-Federal entities.'' 6 U.S.C. 659(c)(1). The Federal Information Security Modernization Act of 2014 (FISMA) established a federal information security incident center and required the Department to operate it. 44 U.S.C. 3556(a).

The Cybersecurity and Infrastructure Security Agency (CISA) operates the federal information security incident center. Through this center, FISMA required the Department to provide technical assistance and guidance on detecting and handling security incidents, compile and analyze incident information that threatens information security, inform agencies of current and potential threats and vulnerabilities, and provide intelligence or other information about cyber threats, vulnerabilities, and incidents to agencies. 44 U.S.C. 3556(a). FISMA also required agencies to report information security incidents, major incidents, and data breaches to the federal information security incident center. 44 U.S.C. 3556(b) (information security incidents), 44 U.S.C. 3554(b)(7)(C)(iii)(III) (major incidents); Public Law 113–283, 2(d) (2014) (codified at 44 U.S.C. 3553, note (Breaches)). The Cybersecurity Information Sharing Act of 2015 (CISA 2015) requires DHS, in consultation with interagency partners, to establish the Federal Government's capability and process for receiving cyber threat indicators and defensive measures, and directs DHS to further share cyber threat indicators and defensive measures it receives with certain federal entities in an automated and real-time manner. 6 U.S.C. 1504(c).

CISA is responsible for performing, coordinating, and supporting response to information security incidents, which may originate outside the Federal community and affect users within it, or originate within the Federal community and affect users outside of it. Often, therefore, the effective handling of security incidents relies on information sharing among individual users, industry, and the Federal Government, which may be facilitated by and through CISA.

Per the Federal Information Security Modernization Act of 2014, CISA operates the Federal information security incident center for the United States federal government. Each federal agency is required to notify and consult with CISA regarding information security incidents involving federal information systems. Additional entities report incident information to CISA voluntarily.

CISA's website (at *US-CERT.gov*) is a primary tool used by constituents to report incident information, access information sharing products and services, and interact with CISA. Constituents, which may include anyone or any entity in the public, use forms located on the website to complete these activities.

By accepting incident reports and feedback, and interacting among federal agencies, industry, the research community, state and local governments, and others to disseminate reasoned and actionable cyber security information to the public, CISA has provided a way for citizens, businesses, and other institutions to communicate and coordinate directly with the Federal Government about cybersecurity. The information is collected via the following forms:

1. The Incident Reporting Form, DHS Cyber Threat Indicator and Defensive Measure Submission System and Malware Analysis Submission Form enable end users to report incidents and indicators as well as submit malware artifacts associated with incidents to CISA. This information is used by DHS to conduct analyses and provide warnings of system threats and vulnerabilities, and to develop mitigation strategies as appropriate. The primary purpose for the collection of this information is to allow DHS to contact requestors regarding their request.

2. The Mail Lists Form enables end users to subscribe to the National Cyber Awareness System's mailing lists, which deliver the content of and links to CISA's information sharing products. The user must provide an email address in order to subscribe or unsubscribe, though both of these actions are optional. The primary purpose for the collection of this information is to allow DHS to contact requestors regarding their request.

3. The Cyber Security Evaluation Tool (CSET) Download Form, which requests the name, email address, organization, infrastructure sector, country, and intended use of those seeking to download the CSET. All requested fields are optional. The primary purpose for the collection of this information is to allow DHS to contact requestors regarding their request.

In order to be responsive to an ever-changing cybersecurity environment, the forms may change to collect data related to current capabilities or vulnerabilities. Standards, guidelines, and requirements of CISA are perpetually adapting to the volatile cybersecurity environment. CISA must retain the ability to update these forms as required, or CISA will be unable to collect critical incident data in support of our mission. Without the necessary tools and methods to collect this information, CISA will be unable to effectively satisfy mission requirements and support our stakeholders through information collection, analysis, and exchange. The general scope and purpose of the forms will remain the same.

Incident reports are primarily submitted using CISA's incident auto-submission interface. Alternately, information may be collected through web-based electronic forms, email, or telephone. Web form submission is also used as the collection method for the other forms listed. These methods enable individuals, private sector entities, personnel working at other federal or state agencies, and international entities, including individuals, companies and other nations' governments to submit information.

This is a revision to an existing form. The changes to the collection since the previous OMB approval include: updating the name of the Agency from NPPD to CISA, updating the Incident Reporting Form, removing the ICSJWG FORM, and updating the burden and cost estimates.

The Incident Reporting Form was updated to add reporting options; and updated to improve user-friendliness by having the form be directional. The changes include: Adding structured, distinct options for reporting incidents, major incidents, breaches, and events under investigation; and adding fields to collect expanded information on topics including attack vectors, indicators of compromise, communications from compromised systems, critical infrastructure sectors, memory captures, system and network logs, and unattributed cyber intrusions.

This is a revised information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: CISA Reporting Forms.

OMB Control Number: 1670–0037.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments, Private Sector, and Academia.

Number of Annualized Respondents: 139,125.

Estimated Time per Respondent: 0.3333 hours, 0.1667 hours, or 0.0167 hours.

Total Annualized Burden Hours: 13,852 hours.

Total Annualized Respondent Opportunity Cost: $504,494.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $2,100,032.

Larry L. Willis,

Deputy Chief Information Security Officer.

[FR Doc. 2019–28502 Filed 1–3–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–10]

60-Day Notice of Proposed Information Collection: Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Michell M. McBee, Special Needs Assistance Specialist, Office of Special Needs Assistance Programs, Community Planning and Development, U.S. Dept of Housing and Urban Development (HUD), 451 7th Street SW, Washington, DC 20410; email Michell M. McBee at *Michell.M.McBee@hud.gov* or telephone 202–402–2799. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of available documents submitted to OMB may be obtained from Ms. McBee.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program Renewal.

OMB Approval Number: 2506–New.

Type of Request: New.

Description of the need for the information and proposed use: The Rent Calculation Worksheet is used at the beginning of the renewal contract term to determine the rent cost and can be in effect until contract rents for units in the project are adjusted. The amounts of the monthly contract rents are in accordance with HUD requirements by using the Operating Cost Allocation Factor (OCAF). The Renewal Contract is a Housing Assistance Payments contract (HAP) between the Public Housing Authority and the owner of the project.

Respondents (*i.e.,* affected public): Homeless individuals, Public Housing Authorities, Property/Project Owners.

Estimated Number of Respondents: 378.

Estimated Number of Responses: 378.

Frequency of Response: Annually.

Average Hours per Response: 2.

Total Estimated Burdens: 756 hrs annually.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HAP Contract with Rent Calculation addendum	378	1	1	2	756	$40.10	30,315.60
Total							

Hourly Rate at a GS–12 Level: $40.10.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 18, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–28523 Filed 1–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–08]

60-Day Notice of Proposed Information Collection: 24 CFR Part 55, Floodplain Management and Protection of Wetlands

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Liz Zepeda, Environmental Specialist, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Liz Zepeda at *elizabeth.g.zepeda@hud.gov* or telephone 202–402–3988. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: 24 CFR 55, Floodplain Management and Protection of Wetlands.

OMB Approval Number: 2506–0151.

Type of Request: Extension of currently approved request.

Form Number: None.

Description of the need for the information and proposed use: 24 CFR 55 implements decisionmaking procedures prescribed by Executive Order 11988 with which applicants must comply before HUD financial assistance can be approved for projects that are located within floodplains. Records of compliance must be kept.

Respondents (*i.e.* affected public): Local, state, and tribal governments.

Estimated Number of Respondents: 575.

Estimated Number of Responses: 575.

Frequency of Response: 1.

Total Estimated Burdens: 2,500 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
55.20	275	1	275	8	2,200	40	88,000
55.21	300	1	300	1	300	40	12,000
Total	575	1	575	Varies	2,500	40	100,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 18, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–28526 Filed 1–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–09]

60-Day Notice of Proposed Information Collection: Continuum of Care Recordkeeping

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice

is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20410; telephone 202–708–5015 (This is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Recordkeeping for HUD's Continuum of Care Program.

OMB Approval Number: 2506–0199.

Type of request: Extension.

Description of the need for the information and proposed use: This submission is to request an extension of an Existing Collection in use without an OMB Control Number for the Recordkeeping for HUD's Continuum of Care Program. Continuum of Care program recipients will be expected to implement and retain the information collection for the recordkeeping requirements. The statutory provisions and implementing interim regulations govern the Continuum of Care Program recordkeeping requirements for recipient and subrecipients and the standard operating procedures for ensuring that Continuum of Care Program funds are used in accordance with the program requirements. To see the regulations for the new CoC program and applicable supplementary documents, visit HUD's Homeless Resource Exchange at *https://www.onecpd.info/resource/2033/hearth-coc-program-interim-rule/*.

Respondents (*i.e.* affected public): Continuum of Care program recipients and subrecipients.

Estimated Number of Respondents: The CoC record keeping requirements include 45 distinct activities. Each activity requires a different number of respondents ranging from 10 to 350,000. There are 366,500 unique respondents.

Estimated Number of Response: 4,238,075.

Frequency of Response: Each activity has a unique frequency of response, ranging from once to 200 times annually.

Average Hours per Response: Each activity also has a unique associated number of hours of response, ranging from 15 minutes to 180 hours.

Total Estimated Burdens: The total number of hours needed for all reporting is 1,921,711 hours.

Information collection (A)	Number of respondents (B)	Response frequency (average) (C)	Total annual responses (D)	Burden hours per response (E)	Total annual hours (F)	Hourly rate	Burden cost per instrument
§ 578.5(a) Establishing the CoC	450.00	1.00	450.00	8.00	3,600.00	39.07	140,652.00
§ 578.5(b) Establishing the Board	450.00	1.00	450.00	5.00	2,250.00	39.07	87,907.50
§ 578.7(a)(1) Hold CoC Meetings	450.00	2.00	900.00	4.00	3,600.00	39.07	140,652.00
§ 578.7(a)(2) Invitation for New Members	450.00	1.00	450.00	1.00	450.00	39.07	17,581.50
§ 578.7(a)(4) Appoint committees	450.00	2.00	900.00	0.50	450.00	39.07	17,581.50
§ 578.7(a)(5) Governance charter	450.00	1.00	450.00	7.00	3,150.00	39.07	123,070.50
§ 578.7(a)(6) and (7) Monitor performance and evaluation	450.00	1.00	450.00	9.00	4,050.00	39.07	158,233.50
§ 578.7(a)(8) Centralized or coordinated assessment system	450.00	1.00	450.00	8.00	3,600.00	39.07	140,652.00
§ 578.7(a)(9) Written standards	450.00	1.00	450.00	5.00	2,250.00	39.07	87,907.50
§ 578.7(b) Designate HMIS	450.00	1.00	450.00	10.00	4,500.00	39.07	175,815.00
§ 578.9 Application for funds	450.00	1.00	450.00	180.00	81,000.00	39.07	3,164,670.00
§ 578.11(c) Develop CoC plan	450.00	1.00	450.00	9.00	4,050.00	39.07	158,233.50
§ 578.21(c) Satisfying conditions	8,000.00	1.00	8,000.00	4.00	32,000.00	39.07	1,250,240.00
§ 578.23 Executing grant agreements	8,000.00	1.00	8,000.00	1.00	8,000.00	39.07	312,560.00
§ 578.35(b) Appeal—solo	10.00	1.00	10.00	4.00	40.00	39.07	1,562.80
§ 578.35(c) Appeal—denied or decreased funding	15.00	1.00	15.00	1.00	15.00	39.07	586.05
§ 578.35(d) Appeal—competing CoC	10.00	1.00	10.00	5.00	50.00	39.07	1,953.50
§ 578.35(e) Appeal—Consolidated Plan certification	5.00	1.00	5.00	2.00	10.00	39.07	390.70
§ 578.49(a)—Leasing exceptions	5.00	1.00	5.00	1.50	7.50	39.07	293.03
§ 578.65 HPC Standards	20.00	1.00	20.00	10.00	200.00	39.07	7,814.00
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000.00	1.00	7,000.00	0.50	3,500.00	39.07	136,745.00
§ 578.75(a)(1) State and local requirements—housing codes	20.00	1.00	20.00	3.00	60.00	39.07	2,344.20
§ 578.75(b) Housing quality standards	72,800.00	2.00	145,600.00	1.00	145,600.00	39.07	5,688,592.00
§ 578.75(b) Suitable dwelling size	72,800.00	2.00	145,600.00	0.08	11,648.00	39.07	455,087.36
§ 578.75(c) Meals	70,720.00	1.00	70,720.00	0.50	35,360.00	39.07	1,381,515.20
§ 578.75(e) Ongoing assessment of supportive services	8,000.00	1.00	8,000.00	1.50	12,000.00	39.07	468,840.00
§ 578.75(f) Residential supervision	6,600.00	3.00	19,800.00	0.75	14,850.00	39.07	580,189.50
§ 578.75(g) Participation of homeless individuals	11,500.00	1.00	11,500.00	1.00	11,500.00	39.07	449,305.00
§ 578.75(h) Supportive service agreements	3,000.00	100.00	300,000.00	0.50	150,000.00	39.07	5,860,500.00

Information collection (A)	Number of respondents (B)	Response frequency (average) (C)	Total annual responses (D)	Burden hours per response (E)	Total annual hours (F)	Hourly rate	Burden cost per instrument
§ 578.77(a) Signed leases/occupancy agreements	104,000.00	2.00	208,000.00	1.00	208,000.00	39.07	8,126,560.00
§ 578.77(b) Calculating occupancy charges	1,840.00	200.00	368,000.00	0.75	276,000.00	39.07	10,783,320.00
§ 578.77(c) Calculating rent	2,000.00	200.00	400,000.00	0.75	300,000.00	39.07	11,721,000.00
§ 578.81(a) Use restriction	20.00	1.00	20.00	0.50	10.00	39.07	390.70
§ 578.91(a) Termination of assistance	400.00	1.00	400.00	4.00	1,600.00	39.07	62,512.00
§ 578.91(b) Due process for termination of assistance	4,500.00	1.00	4,500.00	3.00	13,500.00	39.07	527,445.00
§ 578.95(d)—Conflict-of-Interest exceptions	10.00	1.00	10.00	3.00	30.00	39.07	1,172.10
§ 578.103(a)(3) Documenting homelessness	300,000.00	1.00	300,000.00	0.25	75,000.00	39.07	2,930,250.00
§ 578.103(a)(4) Documenting at risk of homelessness	10,000.00	1.00	10,000.00	0.25	2,500.00	39.07	97,675.00
§ 578.103(a)(5) Documenting imminent threat of harm	200.00	1.00	200.00	0.50	100.00	39.07	3,907.00
§ 578.103(a)(7) Documenting program participant records	350,000.00	6.00	2,100,000.00	0.25	525,000.00	39.07	20,511,750.00
§ 578.103(a)(7) Documenting case management	8,000.00	12.00	96,000.00	1.00	96,000.00	39.07	3,750,720.00
§ 578.103(a)(13) Documenting faith-based activities	8,000.00	1.00	8,000.00	1.00	8,000.00	39.07	312,560.00
§ 578.103(b) Confidentiality procedures	11,500.00	1.00	11,500.00	1.00	11,500.00	39.07	449,305.00
§ 578.105(a) Grant/project changes—UFAs	20.00	2.00	40.00	2.00	80.00	39.07	3,125.60
§ 578.105(b) Grant/project changes—multiple project applicants	800.00	1.00	800.00	2.00	1,600.00	39.07	62,512.00
Total	1,075,195.00		4,238,075		2,056,710.50		80,355,679.24

Annualized Cost @$39.07/hr (GS–12): $80,355,679.24.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 18, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–28525 Filed 1–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7022–N–03]

60-Day Notice of Proposed Information Collection: Federal Labor Standards Payee Verification and Payment Processing; OMB Control #2501–0021

AGENCY: Field Policy and Management, Office of Davis Bacon and Labor Standards, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Suzette Agans, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 7116 or the number (202) 402–5089) this is not a toll free number or email at *Suzette.M.Agans@hud.gov* or a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number though TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollards, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–3400 (this is not a toll free number) or email Colette Pollard at *Colette.Pollard@hud.gov* for copies of the proposed forms and other available information. Persons with hearing or speech impairments may access this number though TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Federal Labor Standards Payee Verification and Payment Processing

OMB Control Number, if applicable: 2501–0021.

Description of the need for the information and proposed use: HUD, State, Local and Tribal housing agencies administrating HUD-assisted programs must enforce Federal Labor Standards requirements, including the payment of prevailing wage rates to laborers and mechanics employed on HUD-assisted construction and maintenance work that

is covered by these requirements. Enforcement activities include securing funds to ensure the payment of wage restitution that has been or may be found due to laborers and mechanics who were employed on HUD-assisted projects.

Also, for the payment to the U.S. Treasury of liquidated damages that were assessed for violations of Contract Work Hours and Safety Standards Act (CWHSSA). If the labor standards discrepancies are resolved, HUD refunds associated amounts to the depositor. As underpaid laborers and mechanics are located, HUD sends wage restitution payments to the workers.

Agency form numbers, if applicable: HUD FORM 4734.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of annual burden hours is 1.5. Estimated number of respondents is 15, the frequency is on occasion, and the burden hour per response is .1 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD 4734 DBLS Deposit Voucher	15	1	15	.10	1.5	$42.50	$63.75
Total	15		15	.10	1.5	42.50	63.75

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 18, 2019.

Ben Demarzo,

Assistant Deputy Secretary, Office of Field Policy and Management.

[FR Doc. 2019–28528 Filed 1–3–20; 8:45 am]

BILLINGCODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–31]

60-Day Notice of Proposed Information Collection: Housing Counseling Federal Advisory Committee (HCFAC); OMB Control #2502–0606

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Federal Advisory Committee (HCFAC).

OMB Approval Number: 2502–0606.

OMB Expiration Date: 4/30/2020.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–90005, Application for Membership Housing Counseling Federal Advisory Committee (HCFAC); OGE–450, Confidential Financial Disclosure Report.

Description of the need for the information and proposed use: The Expand and Preserve Homeownership through Counseling Act, Public Law 111–203, title XIV, § 1441, July 21, 2010, 124 Stat. 2163 (Act), 42 U.S.C. 3533(g) directs the Office of Housing Counseling to form a Housing Counseling Federal Advisory Committee (HCFAC) with members representing the mortgage and real estate industries, housing consumers and housing counseling agencies. The Membership Application (HUD–90005) will collect information for individuals in those groups who want to serve on the HCFAC. The information will be used by HUD's Office of Housing Counseling to select and recommend to the Secretary for appointment the members of the Housing Counseling Federal Advisory Committee to ensure the members meet the requirements of the Expand and Preserve Homeownership through Counseling Act and of the Federal Advisory Committee Act.

Respondents: Individuals or households.

Estimated Number of Respondents: 162.

Estimated Number of Responses: 162.

Frequency of Response: Once.

Average Hours per Response: 1.61.

Total Estimated Burden: 261.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 12, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–28522 Filed 1–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–07]

60-Day Notice of Proposed Information Collection: 24 CFR part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; OMB Control #2506–0087

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Liz Zepeda, Environmental Specialist, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Liz Zepeda at *elizabeth.g.zepeda@hud.gov* or telephone 202–402–3988. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: 24 CFR part 58—Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities.

OMB Approval Number: 2506–0087.

Type of Request: Extension.

Form Number: HUD–7015.15.

Description of the need for the information and proposed use: The RROF/C is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds.

Respondents (*i.e.,* affected public): State, local, and tribal governments and nonprofit organizations.

Estimated Number of Respondents: 18,785.

Estimated Number of Responses: 18,785.

Frequency of Response: 1.

Average Hours per Response: .6.

Total Estimated Burdens: 11,271.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	18,785	1	18,785	.6	11,271	33.33	$375,662.43

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 18, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–28527 Filed 1–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7022–N–02]

60-Day Notice of Proposed Information Collection: Federal Labor Standards Questionnaire and Compliant Intake Form; OMB Control #2501–0018

AGENCY: Field Policy and Management, Office of Davis Bacon and Labor Standards, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 6, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Suzette Agans, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 7116 or the number (202) 402–5089) this is not a toll free number or email at *Suzette.M.Agans@hud.gov* or a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number though TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollards, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–3400 (this is not a toll free number) or email Colette Pollard at *Colette.Pollard@hud.gov* for copies of the proposed forms and other available information. Persons with hearing or speech impairments may access this number though TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Federal Labor Standards Questionnaire Compliant Intake Form 4730.

OMB Control Number: 2501–0018.

Description of the need for the information and proposed use: The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

Agency form numbers, if applicable: HUD FORM 4730, 4730 SP, 4731.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of annual burden hours is 900. Estimated number of respondents is 1800, the frequency is on occasion, and the burden hour per response is .50 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden	Hourly cost per response	Annual cost
HUD–4730 Federal Labor Standards Questionnaire	650	1	650	.50	325	$42.50	$13,813
HUD–4730SP Cuestionario De Estándares Federales De Trabajo	650	1	650	.50	325	42.50	13,813
HUD–4731 Compliant Intact Form	500	1	500	.50	250	42.50	10,625
HUD–4730E On-Line Employee Questionnaire	HUD is eliminating the use of this form						
Total			1,800		900	42.50	38,251

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 18, 2019.

Ben Demarzo,

Assistant Deputy Secretary, Office of Field Policy and Management.

[FR Doc. 2019–28529 Filed 1–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120 A2100DD/AAKC001030/ A0A501010.999900]

Tule River Indian Tribe of the Tule River Reservation; Amended and Restated Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Tule River Indian Tribe of the Tule River Reservation's Amended and Restated Liquor Ordinance. The Liquor Ordinance regulates and controls the consumption, possession, manufacture, distribution, and sale of liquor within the Reservation.

DATES: This ordinance shall take effect on February 5, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Room W–2820 Sacramento, California 95825; telephone: (916) 978–6000, fax: (916) 978–6099.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal**

Register notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On April 29, 2019, the Tule River Indian Tribe of the Tule River Reservation duly adopted the Amended and Restated Liquor Ordinance. This **Federal Register** Notice comprehensively amends and supersedes the existing Tule River Indian Reservation Ordinance Legalizing the Introduction, Sale, or Possession of Intoxicants, which was published in the **Federal Register** on December 30, 1970 (35 FR 19798), and repeals all previous ordinances regulating liquor within the Reservation, including the ordinance published in the **Federal Register** on April 9, 1954 (19 FR 2065).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tule River Indian Tribe of the Tule River Reservation duly adopted these amendments to the Tribe's Liquor Ordinance on April 29, 2019.

Dated: December 17, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

The Tule River Indian Tribe of the Tule River Reservation's Amended and Restated Liquor Ordinance shall read as follows:

Ordinance No. 2019—

Amended and Restated Liquor Ordinance

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I. Title

This ordinance shall be known as the Amended and Restated Liquor Ordinance. The short title shall be ''Liquor Ordinance''.

II. Authority

This Liquor Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and Article VI, Section 1(a) of the Constitution of the Tule River Indian Tribe (the ''Tribe''), in conformity with the laws of the State of California.

III. Scope

A. This Liquor Ordinance shall apply to the full extent of the jurisdiction of the Tribe.

B. Compliance with this Liquor Ordinance is hereby made a condition of the use of any land or premises within the Reservation.

C. Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribe, acts under Tribal authority, or enters the Reservation shall be deemed to have consented to the following:

1. To be bound by the terms of this Liquor Ordinance;

2. To the exclusive jurisdiction of the Tribal Court and Tribal Court of Appeals for legal action arising under this Liquor Ordinance; and

3. To service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Liquor Ordinance.

D. No portion of this Liquor Ordinance shall be construed as contrary to Federal law or applicable California laws.

IV. Purpose

The purpose of this Liquor Ordinance is to regulate and control the consumption, possession, manufacture, distribution and sale of liquor within the Reservation (as defined herein), and to permit the sale of liquor by Tribal Retailers, Existing Retailers and Retailers (each as defined herein) to promote the economic development of the Tribe. The enactment of this Liquor Ordinance will increase the ability of the Tribal government to control liquor sales and consumption within the Reservation and will provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services.

This Liquor Ordinance amends and restates the previous ordinance regulating liquor within the Reservation adopted November 7, 1970 and published in the **Federal Register** on December 30, 1970 at 35 FR 19798, and repeals all previous ordinances regulating liquor within the Reservation, including the ordinance published in the **Federal Register** on April 9, 1954 at 19 FR 2065.

V. Findings

The Tribal Council finds as follows:

A. The consumption, possession, manufacture, distribution and sale of liquor in Indian Country are matters of particular concern to the Tribe and the United States. Consistent with the laws of the United States, the control of liquor within the Reservation remains subject to the legislative enactments of the Tribe in the exercise of its governmental powers over the Reservation.

B. Federal law permits the sale of liquor within the Reservation; provided the sale and possession of liquor is consistent with the laws of the State of California and pursuant to an Ordinance duly adopted by the Tribe (18 U.S.C. 1161).

C. The Tribal Council, as the governing body of the Tribe under Article III, Section 1 of the Constitution of the Tribe, desires to adopt this Liquor Ordinance to authorize and regulate the consumption, possession, manufacture, distribution and sale of liquor within the Reservation, as provided herein.

VI. Definitions

As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

A. ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

B. ''Beer'' means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer.

C. ''Existing Retailer'' means a person who, prior to the effective date of this Liquor Ordinance: (i) Is operating and continues to operate a retail business located within the Reservation; and (ii) has a license or permit (as applicable) issued by the California Department of Alcoholic Beverage Control for such Liquor sales.

D. ''Legal Age'' means the age set by the State of California at which it is legal to purchase, consume, or possess Liquor. At the time of the enactment of this Liquor Ordinance, the State of California sets the Legal Age at twenty-one (21). At such time, if any, the State of California sets the Legal Age below age twenty-one (21), the Tribal Council, in its sole discretion shall promulgate regulations to set the Legal Age within the Reservation; provided such Legal Age is at or above the age set by the State of California.

E. ''License'' means a license issued pursuant to this Liquor Ordinance for the Sale of Liquor.

F. ''Licensed Premises'' means the establishment in which Liquor is permitted to be retailed and consumed.

G. ''Liquor'' means the four varieties of liquor herein defined (Alcohol, Spirits, Wine and Beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing Alcohol, Spirits, Wine or Beer. All drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent (1%) of Alcohol by weight shall be conclusively deemed to be intoxicating.

H. ''Person'' means any natural person or entity, including but not limited to corporations, partnerships and trusts.

I. ''Reservation'' means all lands under the jurisdiction and control of the Tule River Indian Tribe and its Tribal Council.

J. ''Retailer'' means a person who is authorized by the Tribe to sell Liquor at retail from a business located within the Reservation after the Effective Date of this Liquor Ordinance.

K. ''Sale'' and ''Sell'' means any exchange or barter; and also includes the selling, supplying or distributing by any means whatsoever, by any person to any person.

L. ''Spirits'' means any beverage which contains Alcohol obtained by distillation, including Wines exceeding seventeen percent (17%) of Alcohol by weight.

M. ''Tribal Court of Appeals'' means the Tribal Court of Appeals or any other entity explicitly designated by the Tribe to serve in that capacity for purposes of this Liquor Ordinance and as permitted under the Compact.

N. ''Tribal Court'' means the judicial branch of the Tribe and such other divisions as the Tribal Council may establish by provision.

O. ''Tribal Liquor Tax'' means the tax imposed as defined in Section XIII.A.

P. ''Tribal Retailer'' means a retailer wholly-owned by the Tribe and located within the Reservation who maintains a license or permit (as applicable) issued by the California Department of Alcoholic Beverage Control.

Q. ''Tribal'' and ''Tribe'' means the Tule River Indian Tribe of California, a federally recognized sovereign nation, including all incorporated and/or unincorporated Tribal governmental entities (including, without limitation, the Tribal Council, Gaming Commission, any economic development entities) and their officials, officers, managers, agents and employees.

R. ''Tule River Tribal Council'' or ''Tribal Council'' means the governing body of the Tribe.

S. ''Wine'' means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent (17%) of Alcohol by weight, including sweet Wines fortified with wine spirits such as port, sherry, muscatel, and angelica, not exceeding seventeen percent (17%) of Alcohol by weight and sake (known as Japanese rice wine).

VII. Powers of Enforcement

A. *Powers.* The Tribal Council, in furtherance of this Liquor Ordinance, shall have the following powers and duties:

1. To publish and enforce the rules and regulations governing the consumption, possession, manufacture, distribution and Sale of Liquor within the Reservation;

2. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions;

3. To authorize a representative to enforce this Liquor Ordinance;

4. To issue Licenses permitting the consumption, possession, manufacture, distribution and Sale of Liquor within the Reservation;

5. To revoke such Licenses as provided herein;

6. To issue Licenses permitting the Sale of Liquor within the Reservation;

7. To hold hearings on violations of this Liquor Ordinance (including the issuance or revocation of Licenses hereunder);

8. To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;

9. To determine and seek damages for violation of this Liquor Ordinance; and

10. To collect taxes and fees levied or set by the Tribal Council, and to keep accurate records, books and accounts.

B. *Limitation on Powers.* In the exercise of its powers and duties under this Liquor Ordinance, the Tribal Council and its individual members shall not accept any gratuity, compensation or any item of value from any Liquor wholesaler, retailer, or distributor or from any licensee.

C. *Inspection Rights.* The Tribal Council, acting through its officials, agents, employees or other designated representatives may, at all reasonable times, for the purposes of determining compliance with this Liquor Ordinance inspect the Licensed Premises.

VIII. Sales of Liquor

A. *Licenses Required.* Only Tribal Retailers, Existing Retailers, and Retailers licensed by the Tribe, may Sell Liquor within the Reservation. For purposes of clarity, a Tribal Retailer and Existing Retailer only require the applicable license or permit issued by the California Department of Alcoholic Beverage Control to Sell Liquor within the Reservation.

B. *Compliance with California Law.* All Sales of Liquor within the Reservation must comply with California law applicable to Sales of Liquor within the Reservation and must be in compliance with the conditions of the license or permit (as applicable) issued by the California Department of Alcoholic Beverage Control for such Sales of Liquor.

C. *No Extensions of Credit.* No credit shall be extended to any person, organization, or entity, for the Sale of Liquor. This provision does not prevent the use of major credit cards in the Sale of Liquor.

D. *Sale for Personal Consumption.* All Sales shall be for the personal use and consumption of the purchaser. Resale of Liquor purchased within the Reservation is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance and purchases Liquor within the Reservation and Sells it, whether in the original container or not, shall be guilty of a violation of this Liquor Ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

E. *Acceptable Identification.* Where there may be a question of a person's right to purchase Liquor by reason of his/her age, such person shall be required to present any one of the following issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

1. Tribal identification card;

2. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

3. United States active duty military or veteran identification cards; or

4. Passport.

IX. Licensing

A. Applicable License Requirements

1. *Tribal Retailers.* Tribal Retailers must obtain a license or permit (as applicable) from the California Department of Alcoholic Beverage Control in order to Sell Liquor within

the Reservation, but shall not be required to obtain a License.

2. *Existing Retailers.* Existing Retailers must obtain a license or permit (as applicable) from the California Department of Alcoholic Beverage Control and an additional License from the Tribe in order to Sell Liquor within the Reservation. In order to obtain a License from the Tribe, the Existing Retailer must present their license or permit (as applicable) from the California Department of Alcoholic Beverage Control to the Tribal Council, certify that he/she is continually operating such business in compliance with the conditions of such license or permit, and agree to comply with the requirements of this Liquor Ordinance and the conditions, if any, imposed on their License by the Tribal Council.

3. *Retailers.* In addition to a license or permit (as applicable) issued by the California Department of Alcoholic Beverage Control, Retailers must obtain a License from the Tribe which shall be issued upon submittal of a sworn application filed with the Tribal Council containing a full and complete showing of the following:

a. Satisfactory proof that the applicant is or will be duly licensed by the State of California.

b. Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible.

c. A description of the premises in which the Liquor is to be sold and proof that the applicant is the owner of such premises, or lessee of such premises, for the term of the License.

d. Agreement by the applicant to accept and abide by all conditions of the License.

e. Payment of a fee as prescribed by the Tribal Council.

f. Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where Liquor is to be sold for at least thirty (30) days prior to consideration by the Tribal Council and has been published in the Tribal newsletter, email, or other print or online media directed to the Tribal community that may be affected by the License. The notice shall state the date, time, and place when the application shall be considered by the Tribal Council pursuant to Section B of this Article.

B. *Hearing on Application for Tribal Liquor License.* All applications for a License shall be considered by the Tribal Council in an open session at which the applicant, his/her attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Council, by secret ballot, shall determine whether to grant or deny the application based on:

1. Whether the requirements of Section A of this Article have been met; and

2. Whether the Tribal Council, in its discretion, determines that granting the License is in the best interest of the Tribe.

In the event that the applicant is the immediate family of a Tribal Council member, such member shall not vote on the application or participate in the hearings as a Tribal Council member.

C. *Special Events.* Sales of Liquor at special events do not require a License, provided such Sales are conducted consistent with applicable California law (including obtaining a permit or authorization for such special event to the extent required) and do not exceed one (1) day.

D. *Conditions of the Tribal License.* Any License issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Tribal Council shall impose, including, but not limited to the following:

1. The License shall be for a term not to exceed two (2) years and shall automatically renew upon the payment of annual fees, if any, established by the Tribal Council.

2. The Licensed Premises shall at all times be maintained in an orderly, clean, and neat manner.

3. The Licensed Premises shall be subject to patrol by the Tule River Department of Public Safety, and such other law enforcement officials as may be authorized under Federal, California, or Tribal law.

4. The Licensed Premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

5. Subject to the provisions of Subsection D.6. of this Article, no Liquor shall be sold, served, disposed of, delivered, or given to any person, or consumed on the Licensed Premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Tribal Council.

6. All acts and transactions under authority of a License shall be in conformity with the laws of the State of California, and shall be in accordance with this Liquor Ordinance and any conditions imposed on such License.

7. No person under the Legal Age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume Liquor on the Licensed Premises.

8. There shall be no discrimination in the operations under the License by reason of race, age, disability, national origin, religion, or gender.

E. *License Not a Property Right.* Notwithstanding any other provision of this Liquor Ordinance, a License is a mere permit for a fixed duration of time. A License shall not be deemed a property right or vested right of any kind, nor shall the granting of a License give rise to a presumption of legal entitlement to the granting of such License for a subsequent time period.

F. *Assignment or Transfer.* No License issued under this Liquor Ordinance shall be assigned or transferred.

X. Manufacture and Distribution

The Tribal Council has the authority to adopt rules and regulations to authorize the manufacture and distribution of Liquor within the Reservation. Until such time as the Tribal Council adopts such rules and regulations, the manufacture and distribution of Liquor for Sale is strictly prohibited.

XI. Prohibitions and Violations

A. *Sales or Possession With Intent to Sell Without a License.* Any person who shall Sell or offer for Sale, distribute, manufacture, or transport in any manner, any Liquor in violation of this Liquor Ordinance, or who shall operate a business for the Sale of Liquor or shall have Liquor in his/her possession with intent to Sell or distribute without a License, shall be guilty of a violation of this Liquor Ordinance.

B. *Purchases From Other Than Licensed Facilities.* Any person within the boundaries of the Reservation who buys Liquor from any person other than at a properly Licensed Premises shall be guilty of a violation of this Liquor Ordinance.

C. *Sales to Persons Under the Influence of Liquor.* Any person who Sells Liquor to a person clearly under the influence of Liquor shall be guilty of a violation of this Liquor Ordinance.

D. *Consuming Liquor in a Mode of Public or Private Transportation.* Any person engaged wholly, or in part, in the business of carrying passengers for hire (including every agent, servant or employee) or such person who shall knowingly allow any person to drink Liquor in any mode of public or private transportation shall be guilty of a violation of this Liquor Ordinance. Any person who shall drink any Liquor in

any mode of public or private transportation shall be guilty of a violation of this Liquor Ordinance.

E. *Consumption or Possession of Liquor by Persons Under the Legal Age.*

1. No person under the Legal Age shall purchase, possess or consume any Liquor within the Reservation. Any person violating this Subsection shall be guilty of a separate violation of this Liquor Ordinance for each and every drink so consumed.

2. Any person who shall Sell or provide Liquor to any person under the Legal Age shall be guilty of a violation of this Liquor Ordinance for each Sale or drink provided.

3. No person shall permit any other person under the Legal Age to consume Liquor on his/her premises or any premises under his/her control.

F. *Transfer of Identification to Minor.* Any person who provides, in any manner, a 21 years of age identification card (ID card) to a minor for the purpose of permitting such minor to obtain Liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

G. *Use of False or Altered Identification.* Any person who attempts to purchase Liquor through the use of false or altered ID card, which falsely purports to show the individual to be of Legal Age shall be guilty of violating this Liquor Ordinance.

XII. Enforcement and Penalties

A. *Enforcement.* In enforcing this Liquor Ordinance, the Tribal Council, acting on behalf of the Tribe, may take the following actions:

1. Publish and enforce such rules and regulations as deemed necessary by the Tribal Council to govern the distribution, manufacture, Sale, consumption and possession of Liquor within the Tribe's jurisdiction, including establishing and imposing civil penalties.

2. Revoke any License approved by the Tribal Council under this Liquor Ordinance, following a determination by the Tribal Council that the holder of said License has violated any provision of this Liquor Ordinance or that the License is no longer in the best interest of the Tribe. The Retailer or Existing Retailer shall be provided notice and an opportunity to be heard in any such revocation action.

3. Bring suit in the Tribal Court, or any other court of competent jurisdiction, to enforce this Liquor Ordinance.

4. Hold such hearings as the Tribal Council deems necessary to administer and enforce this Liquor Ordinance.

5. Delegate to the Tribal Court such authority as may be necessary to enforce the civil penalties arising under this Liquor Ordinance. Except as may otherwise be provided by applicable Federal and state law, the Tribal Court shall have exclusive jurisdiction to enforce this Liquor Ordinance.

6. Take all such actions within the Tribal Council's authority under the laws and Constitution of the Tribe in the enforcement of this Liquor Ordinance.

B. *Judicial Enforcement.* The Tribal Court is hereby vested with exclusive jurisdiction to hear and determine all violations arising under this Liquor Ordinance, including the determination of any violation by any person of the provisions of this Liquor Ordinance and the imposition of any penalties arising from said violations.

C. *Liquor Ordinance Violations.* Unless otherwise provided for in a regulation adopted by the Tribal Council, any person guilty of a violation of this Liquor Ordinance shall be liable to pay the Tribe a penalty not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, the Tribal Council may, after a duly noticed hearing, suspend, cancel or revoke any License issued hereunder. The Tribal Council shall provide at least ten (10) days' notice of the hearing to the Retailer or Existing Retailer. The decision of the Tribal Council shall be final.

D. *Declaratory and Injunctive Relief.* In addition to all other remedies, whether in law or in equity, available to the Tribal Court under the Constitution and laws of the Tribe in the enforcement of this Liquor Ordinance, the Tribal Court may employ such declaratory and/or injunctive relief as may be necessary to determine the rights and liabilities arising under this Liquor Ordinance and to otherwise provide for enforcement of this Liquor Ordinance to the fullest extent possible under the Tribe's laws.

E. *Possession of Liquor Contrary to This Liquor Ordinance.* Possession of Liquor contrary to the terms of this Liquor Ordinance is considered to be contraband. Any Tribal agent, employee, or officer who is authorized by the Tribal Council to enforce this Section shall have the authority to, and shall seize, all contraband.

F. *Disposition of Seized Contraband.* Any contraband seized by an Officer shall be preserved in accordance with applicable law. Upon being found in violation of this Liquor Ordinance by the Tribal Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

XIII. Taxation

A. *Imposition of Tribal Liquor Tax.* The Tribal Council, in its sole discretion, may impose a tax upon the privilege of Selling Alcohol within the Reservation pursuant to a duly adopted resolution (''Tribal Liquor Tax''). The tax rate imposed under this Liquor Ordinance shall be established by the Tribal Council and shall be no less than two percent (2%) and not exceed ten percent (10%) of the purchase price of the Liquor. Such Tribal Liquor Tax shall be applied in addition to any other taxes imposed by the Tribe.

B. *Taxes Due, Reporting and Audit Deadline.* Payment of any Tribal Liquor Tax shall be due within thirty (30) days of the end of the calendar quarter for which taxes are due, or such other date set by the Tribal Council. Along with the payment of the taxes imposed herein, the Tribal Council may request an accounting of all income from the Sale or distribution of Liquor, as well as for the taxes collected. At its discretion, The Tribal Council may review or audit the books and records of any Existing Retailer or Retailer relating to the Sale of Liquor within the Reservation. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Tribal Council, such a review or audit is necessary to verify the accuracy of reports.

XIV. Profits

A. *Disposition of Proceeds.* The gross proceeds collected by the Tribal Council from all licensing fees and from the taxation of the Sales of Liquor within the Reservation shall be distributed as follows:

1. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities pursuant to this Liquor Ordinance.

2. The remainder shall be turned over to the account of the Tribe designated by the Tribal Council.

XV. Severability and Miscellaneous

A. *Severability.* If any provision or application of this Liquor Ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

B. *Prior Enactments.* This Liquor Ordinance repeals and supersedes all previous liquor ordinances enacted by the Tribe.

C. *Conformance with California Laws.* All acts and transactions under this Liquor Ordinance shall be in conformity with the laws of the State of California.

D. *Effective Date.* This Liquor Ordinance shall be effective on such date as the Secretary of the Interior certifies this Liquor Ordinance and publishes the same in the **Federal Register** (the ''Effective Date'').

E. *Adoption and Amendment.* This Liquor Ordinance shall be adopted and may be amended by a majority vote of the Tribal Council at a duly called meeting of the Tribal Council and subsequent review by the appropriate official of the Department of the Interior and publication in the **Federal Register**.

F. *Sovereign Immunity.* Nothing contained in this Liquor Ordinance shall be construed as a waiver of the sovereign immunity of the Tribe, nor does this Liquor Ordinance in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action. Nothing in this Liquor Ordinance shall be construed to confer jurisdiction on a court or judicial body to hear disputes or causes of action arising from this Liquor Ordinance or its subject matter. The sovereign immunity of the Tribe is in no manner waived by this Liquor Ordinance or by any action of any Tribal employee or official acting pursuant to the Liquor Ordinance.

[FR Doc. 2019–28443 Filed 1–3–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO300000.L13200000; OMB Control Number 1004–0073]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Coal Management; Control Number 1004–0073

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 5, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Chandra Little; or by email to *cclittle@blm.gov.* Please reference OMB Control Number 1004–0073 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jason Powell by email at *jlpowell@blm.gov,* or by telephone at 202–912–7502. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 12, 2019 (84 FR 33283). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection enables the BLM to learn the extent and qualities of Federal coal resources; evaluate the environmental impacts of coal leasing and development; determine the qualifications of prospective lessees to acquire and hold Federal coal leases; and ensure lessee compliance with applicable statutes, regulations, and lease terms and conditions.

Title of Collection: Coal Management.

OMB Control Number: 1004–0073.

Form Numbers: 3440–1, Application and License to Mine Coal (Free Use); and 3400–12, Coal Lease.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Applicants for, and holders of, coal exploration licenses; applicants/bidders for, and holders of, coal leases; applicants for, and holders of, licenses to mine coal; and surface owners and State and tribal governments whose lands overlie coal deposits.

Total Estimated Number of Annual Respondents: 1,017.

Total Estimated Number of Annual Responses: 1,017.

Estimated Completion Time per Response: Varies from 1 to 800 hours.

Total Estimated Number of Annual Burden Hours: 19,897.

Respondent's Obligation: Required to obtain and retain benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $943,153.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Chandra Little,

Bureau of Land Management, Regulatory Analyst.

[FR Doc. 2019–28485 Filed 1–3–20; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period for Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 11, 2019, the Department of Justice filed a complaint

and lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States of America and the State of Michigan* v. *NCR Corporation,* Civil Action No. 1:19-cv–01041.

The United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the State of Michigan (the ''State''), on behalf of the Michigan Department of Environment, Great Lakes, and Energy (''EGLE''), filed suit against NCR Corporation (''NCR'') under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') for the recovery of response costs and the performance of response work at the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Michigan (the ''Site''). Under the terms of the Consent Decree, NCR will perform an estimated $135.7 million in cleanup work on the Kalamazoo River and the adjacent banks and floodplains. NCR also will pay $76.5 million to EPA and $6 million to the State for past and future Site response costs. Further, NCR will pay $27 million dollars to the Kalamazoo River Natural Resources Trustee Council for natural resources damages and assessment costs. The Kalamazoo River Natural Resources Trustee Council includes both state and federal trustees. The federal trustees include the United States Department of Interior (acting through the Fish and Wildlife Service) and the Department of Commerce (acting through the National Oceanic and Atmospheric Administration). The state trustees include EGLE, the Michigan Department of Natural Resources, and the Michigan Department of the Attorney General. The Consent Decree therefore provides a total estimated value of more than $245 million for cleanup work and payments.

Notice of the lodging of the proposed Consent Decree was originally published in the **Federal Register** on December 17, 2019. *See* 84 FR 242 (Dec. 17, 2019). The publication of the original notice opened a 30-day period for public comment on the proposed Consent Decree that was scheduled to end on January 16, 2020. The publication of the current notice extends the period for public comment on the Consent Decree to February 18, 2020.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and the State of Michigan* v. *NCR Corporation,* D.J. Ref. No. 90–11–2–07912/11. All comments must be submitted no later than February 18, 2020. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $57.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–28473 Filed 1–3–20; 8:45 am]

BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–047; NRC–2016–0119]

Tennessee Valley Authority; Clinch River Nuclear Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Early site permit and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued early site permit (ESP) number ESP–006 to Tennessee Valley Authority (TVA). In addition, the NRC has prepared a Summary Record of Decision (ROD) that supports the NRC's decision to issue ESP number ESP–006.

DATES: Early site permit ESP–006 became effective on December 19, 2019 and is valid for 20 years, until midnight on December 19, 2039.

ADDRESSES: Please refer to Docket ID NRC–2016–0119 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–2016–0119. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals 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: Allen Fetter, telephone: 301–415–8556; email: *allen.fetter@nrc.gov;* or Mallecia Sutton, telephone: 301–415–0673; email: *mallecia.sutton@nrc.gov* regarding safety matters; or Tamsen Dozier, telephone: 301–415–2272; email: *tamsen.dozier@nrc.gov* regarding environmental matters. Allen Fetter and Mallecia Sutton are staff of the Office of Nuclear Reactor Regulation and Tamsen Dozier is in the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of early site permit number ESP–006 to TVA, and under 10 CFR 51.102(c), the NRC is providing notice that the ROD has been issued. With respect to the early site permit application filed by TVA, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended (AEA), and the Commission's regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is

reasonable assurance that the site is in conformity with the provisions of the AEA and the Commission's regulations. Furthermore, the NRC finds that the Licensee is technically qualified to engage in the activities authorized, and that issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public. Finally, the NRC finds that the findings required by subpart A of 10 CFR part 51 have been made.

Accordingly, the early site permit (ESP–006) was issued on December 19, 2019 and became effective immediately. The early site permit is valid for 20 years, until midnight on December 19, 2039.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Environmental Impact Statement (FEIS) that document the information reviewed and the NRC's conclusion. The Commission has also issued its decision on the staff's review after having held the mandatory hearing on August 14, 2019, which serves as the ROD in this proceeding. The NRC also prepared a document summarizing the ROD to accompany its actions on the ESP application; this Summary ROD incorporates by reference materials contained in the FEIS. The FSER, FEIS, Summary ROD, and accompanying documentation included in the ESP package, as well as the Commission's hearing decision and ROD, are available online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's ADAMS, which provides text and image files of NRC's public documents.

III. Availability of Documents

The documents identified in the following table are available to interested persons through the ADAMS Public Documents collection. A copy of the early site permit application is also available for public inspection at the NRC's PDR and at *https://www.nrc.gov/reactors/new-reactors/html.*

Document	ADAMS Accession No.
Final Safety Evaluation Report for the Early Site Permit Application for the Clinch River Nuclear Site.	ML19162A157
Final Environmental Impact Statement for an Early Site Permit (ESP) at the Clinch River Nuclear Site.	ML19087A266
Commission's decision following mandatory hearing.	ML19351D663
Summary Record of Decision.	ML19233A263
Letter transmitting Early Site Permit Number ESP–006 and accompanying documentation.	ML19189A228
Early Site Permit Number ESP–006 (public version).	ML19352D868
Clinch River Nuclear Site, Early Site Permit Application, Revision 2, January 18, 2019.	ML19030A485

Dated at Rockville, Maryland, this 31st day of December 2019.

For the Nuclear Regulatory Commission.

Anna H. Bradford,

Director, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–28520 Filed 1–3–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0066]

Information Collection: NRC Form 314, Certificate of Disposition of Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 314 Certificate of Disposition of Materials.''

DATES: Submit comments by February 5, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0028), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC–2019–0066 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–2019–0066.
- *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.* A copy of NRC Form 314 and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19338C940. The supporting statement is available in ADAMS under Accession No. ML19338C939.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be

publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 314, Certificate of Disposition of Materials.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 25, 2019 (84 FR 50480).

1. *The title of the information collection:* ''NRC Form 314 Certificate of Disposition of Materials.''

2. *OMB approval number:* 3150–0028.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 314.

5. *How often the collection is required or requested:* Form is required when NRC licensees do not wish to renew their license.

6. *Who will be required or asked to respond:* Respondents are firms, institutions, and individuals holding NRC license to possess and use radioactive materials who do not wish to renew those licenses.

7. *The estimated number of annual responses:* 136.

8. *The estimated number of annual respondents:* 136.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* Each form requires approximately 0.5 hours to prepare. 136 × 0.5 hour = a total for all respondents of 68 hours per year.

10. *Abstract:* NRC Form 314 is submitted by a materials licensee who wishes to terminate its license. The form provides information needed by NRC to determine whether the licensee has radioactive materials on hand which must be transferred or otherwise disposed of prior to expiration or termination of the license.

Dated at Rockville, Maryland, this 30th day of December 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–28438 Filed 1–3–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2019; Order No. 5381]

FY 2019 Annual Compliance Report

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2019. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance with title 39, chapter 36, and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: *Comments are due:* January 30, 2020. *Reply Comments are due:* February 10, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Overview of the Postal Service's FY 2019 ACR
III. Procedural Steps
IV. Ordering Paragraphs

I. Introduction

On December 27, 2019, the United States Postal Service (Postal Service) filed with the Commission its Annual Compliance Report (ACR) for fiscal year (FY) 2019, pursuant to 39 U.S.C. 3652.[1] Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2019 Comprehensive Statement, its FY 2019 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. *See respectively,* 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20–23. In line with past practice, some of the material in the FY 2019 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2019 were in compliance with applicable title 39 requirements.

II. Overview of the Postal Service's FY 2019 ACR

Contents of the filing. The Postal Service's FY 2019 ACR consists of a 72-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with supporting rationale, filed as Attachment Two. The filing also includes the Comprehensive Statement,[2] Report to the Secretary of the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This material has been filed electronically with the Commission.

Scope of the filing. The material appended to the narrative consists of: (1) Domestic product costing material filed on an annual basis summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material summarized in the International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. FY 2019 ACR at 2–3. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.* at 3.

''*Roadmap*'' *document.* A roadmap to the FY 2019 ACR can be found in

[1] United States Postal Service FY 2019 Annual Compliance Report, December 27, 2019, at 1 (FY 2019 ACR). Public portions of the Postal Service's filing are available on the Commission's website at: *http://www.prc.gov.*

[2] In years prior to 2013, the Commission reviewed the Postal Service's reports prepared pursuant to 39 U.S.C. 2803 and 39 U.S.C. 2804 (filed as the Comprehensive Statement by the Postal Service) in its ACD. However, as it has for the past several years, the Commission intends to issue a separate notice soliciting comments on the comprehensive statement and provide its related analysis in a separate report from the ACD.

Library Reference USPS–FY19–9. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; and a list of special studies and a discussion of obsolescence, as required by Commission rule 3050.12. *Id.* at 3–4.

Methodology. The Postal Service states that it has adhered to the methodologies historically used by the Commission subject to changes identified and discussed in Library Reference USPS–FY19–9 and in prefaces accompanying the appended folders. *Id.* at 4. The Postal Service observes that one noteworthy methodological change requires the consolidated annual submission of comprehensive information about the costs and service performance of flat-shaped mail in response to Commission Order No. 5086.[3] Rather than providing the information piecemeal in response to the Commission's requests as in previous years, the Postal Service now provides the public portion of the relevant flats-related material in Library Reference USPS–FY19–45, and the facility-specific nonpublic information in Library Reference USPS–FY19–NP31. FY 2019 ACR at 5.

Market dominant product-by-product costs, revenues, and volumes. Comprehensive cost, revenue, and volume data for all market dominant products of general applicability are shown directly in the FY 2019 CRA or ICRA. *Id.* at 6.

The FY 2019 ACR includes a discussion by class of each market dominant product, including costs, revenues, and volumes, workshare discounts, and passthroughs responsive to 39 U.S.C. 3652(b), and FY 2019 promotions. *Id.* at 6–36.

In response to the Commission's FY 2010 ACD directives,[4] the Postal Service states that it is providing information regarding: (1) All operational changes designed to reduce flats' costs and the estimated financial effects of such changes; (2) all costing methodology improvements made in FY 2019 and the estimated financial effects of such changes; and (3) a statement summarizing the current year subsidy of the flats product. In Docket No. RM2018–1, the Commission codified and expanded the first directive as Rule 3050.50(f), which applies to all flat-shaped mail.[5] Accordingly, the Postal Service states that the information required by Rule 3050.50(f) is provided in Library Reference USPS–FY2019–45, noting that the section titled ''Costing Methodology Changes and Subsidy of the Flats Product'' responds to the second and third directives. FY 2019 ACR at 25–26. In addition, the Postal Service presented its schedule of above-average price increases for Flats, which provides planned price increases for Flats by the consumer price index times 1.05. *Id.* at 25.

Service performance. The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2010. Responsive information appears in Library Reference USPS–FY19–29. *Id.* at 37.

Customer satisfaction. The FY 2019 ACR discusses the Postal Service's approach for measuring customer experience and satisfaction; discusses survey modifications; describes the methodology; presents a table with survey results; compares the results from FY 2018 to FY 2019; and provides information regarding consumer access to postal services. *Id.* at 37–59.

Competitive products. The FY 2019 ACR provides costs, revenues, and volumes for competitive products of general applicability in the FY 2019 CRA or ICRA. For competitive products not of general applicability, data are provided in non-public Library References USPS–FY19–NP2 and USPS–FY19–NP27. *Id.* at 62. The FY 2019 ACR also addresses the competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 62–69.

Market tests; nonpostal services. The Postal Service discusses a single competitive market test conducted during FY 2019 and nonpostal services. *Id.* at 70.

III. Procedural Steps

Statutory requirements. Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint an officer of the Commission (Public Representative) to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2019 ACR and on whether any rates or fees in effect during FY 2019 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 or Commission regulations promulgated thereunder. Commenters addressing market dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 39 U.S.C. 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review.

Access to filing. The Commission has posted the publicly available portions of the FY 2019 ACR on its website at: *http://www.prc.gov.*

Comment deadlines. Comments by interested persons are due on or before January 30, 2020. Reply comments are due on or before February 10, 2020. The Commission, upon completion of its review of the FY 2019 ACR, comments, and other data and information submitted in this proceeding, will issue its ACD.

Public Representative. Mallory L. Smith is designated to serve as the Public Representative to represent the interests of the general public in this proceeding. Neither the Public Representative nor any additional persons assigned to assist her shall participate in or advise as to any Commission decision in this proceeding other than in his or her designated capacity.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. ACR2019 to consider matters raised by the United States Postal Service's FY 2019 Annual Compliance Report.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Mallory L. Smith as an officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.

3. Comments on the United States Postal Service's FY 2019 Annual Compliance Report to the Commission are due on or before January 30, 2020.

4. Reply comments are due on or before February 10, 2020.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–28457 Filed 1–3–20; 8:45 am]

BILLING CODE 7710–FW–P

[3] *Id.* at 5; *see* Docket No. RM2018–1, Order Adopting Final Rules on Reporting Requirements Related to Flats, May 8, 2019 (Order No. 5086).

[4] Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 106–107 (FY 2010 ACD).

[5] FY 2019 ACR at 26; *see* Order No. 5086.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–84 and CP2020–83; MC2020–85 and CP2020–84; MC2020–86 and CP2020–85]

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:* January 7, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. 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).:* MC2020–84 and CP2020–83; *Filing Title:* USPS Request to Add Parcel Select Contract 37 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* January 7, 2020.

2. *Docket No(s).:* MC2020–85 and CP2020–84; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 111 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* January 7, 2020.

3. *Docket No(s).:* MC2020–86 and CP2020–85; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 68 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* January 7, 2020.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–28458 Filed 1–3–20; 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).

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., January 15, 2020.

PLACE: 8th Floor Board Conference Room, 844 North Rush Street, Chicago, Illinois, 60611.

STATUS: The initial part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Report from Director of Programs (Plan for Implementation of SCOTUS decision)
2. Report from Director of Programs and Director of Disability on possible updates and improvements to the disability process
3. NRRIT consultant follow up

Portions Closed to the Public

4. Personnel matters

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Authority: 5 U.S.C. 552b.

Dated: January 2, 2020.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020–00056 Filed 1–2–20; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10739; 34–87874; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of telephonic meeting of Securities and Exchange Commission Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a telephonic public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Friday, January 24, 2020, from 11:30 a.m. until 1:15 p.m. (ET) and will be open to the public via telephone at 1–844–721–7239 in the United States or (409) 207–6953 outside the United States, participant code 4443950. Written statements should be received on or before January 24, 2020.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

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

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements 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.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Chief Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public *via* telephone. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**.

The agenda for the meeting includes: Welcome remarks; a discussion of the SEC's proxy voting advice and Rule 14a–8 proposed rulemakings (which may include a recommendation from the Investor as Owner Subcommittee); and a discussion of exchange rebate tier disclosure (which may include a recommendation of the Market Structure Subcommittee).

Dated: December 31, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–28499 Filed 1–3–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87871; File No. SR–MIAX–2019–52]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 315, Anti-Money Laundering Compliance Program, To Reflect the Financial Crimes Enforcement Network's Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions

December 30, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (the ''Commission''), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange, to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). Specifically, the proposed amendments would conform MIAX Rule 315 to the CDD Rule's amendments to the minimum regulatory requirements for Members'[5] anti-money laundering (''AML'') compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. The Exchange has designated this proposal as ''non-controversial'' under paragraph (f)(6) of Rule 19b–4 under the Act,[6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act[7] (''BSA''), among other things, requires financial institutions,[8] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.''[9] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] 17 CFR 240.19b–4(f)(6).

[7] 31 U.S.C. 5311, *et seq.*

[8] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[9] 31 U.S.C. 5318(h)(1).

• independent testing for compliance by broker-dealer personnel or a qualified outside party;

• designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and

• ongoing training for appropriate persons.[10]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members [11] must also comply with Exchange Rule 315, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [12] to clarify and strengthen customer due diligence for covered financial institutions,[13] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[14] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[15] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[16] This proposed rule change amends MIAX Rule 315 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 315 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [17] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, MIAX Rule 315 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, MIAX Rule 315 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to MIAX an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 315, and Members must continue to comply with its requirements.[18] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[19] Accordingly, the Exchange is proposing to amend Exchange Rule 315 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Rule 315(f) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[20] The proposed rule change simply incorporates into Exchange Rule 315 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML

[10] 31 CFR 1023.210(b).

[11] *See* Exchange Rule 100.

[12] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[13] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[14] *See* CDD Rule Release at 29398.

[15] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[16] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[17] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[18] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 315. *See* CDD Rule Release 29421, n. 85.

[19] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[20] *Id.* at 29419.

programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[21] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[22] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[23] The CDD Rule also does not prescribe a particular form of the customer risk profile.[24] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[25]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[26] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[27]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[28] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[29] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[30]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[32] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 315.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 proposed rule change simply incorporates into Exchange Rule 315 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[33] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[34] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[35] and Rule 19b–4(f)(6)[36] thereunder.

[21] *Id.* at 29421.

[22] *Id.* at 29422.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 29402.

[29] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[30] *Id.*

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] 17 CFR 240.15b9–1.

[34] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 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

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–52 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MIAX–2019–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MIAX–2019–52 and should be submittedon or before January 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

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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.

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33739; 812–15040]

Fundrise Real Estate Interval Fund, LLC, et al.

December 31, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order (''Order'') under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. Applicants: 11 Dupont Circle NW, 9th Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at 202–551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION:

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

APPLICANTS: Fundrise Real Estate Interval Fund, LLC (the ''Company''), Fundrise Real Estate Investment Trust, LLC, Fundrise Equity REIT, LLC, Fundrise Income eREIT II, LLC, Fundrise Income eREIT III, LLC, Fundrise Income eREIT 2019, LLC, Fundrise Growth eREIT II, LLC, Fundrise Growth eREIT III, LLC, Fundrise Growth eREIT 2019, LLC, Fundrise Midland Opportunistic REIT, LLC, Fundrise West Coast Opportunistic REIT, LLC, Fundrise East Coast Opportunistic REIT, LLC, Fundrise For-Sale Housing eFUND—Los Angeles CA, LLC, Fundrise For-Sale Housing eFUND—Washington DC, LLC, Fundrise National For-Sale Housing eFund, LLC, Fundrise Opportunity Fund, LP, (the ''Existing Affiliated Funds''), Fundrise Advisors, LLC (''FA'') and Fundrise Lending LLC.

FILING DATES: The application was filed on June 11, 2019, and amended on September 4, 2019, and November 26, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 January 24, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

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 for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under section 17(d) of the Act and rule 17d–1 under the Act to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Funds [1] and/or one or more

[1] ''Regulated Funds'' means the Company and the Future Regulated Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the proposed co-investment program (the ''Co-Investment Program'').

Affiliated Funds[2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub (defined below) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. The Company is a Delaware limited liability company organized as a non-diversified closed-end management investment company that operates as an interval fund pursuant to rule 23c3 under the Act. The Company has elected to be treated as a REIT under Sub-Chapter M of the Code, and intends to continue to maintain its qualification as a REIT in the future. The Company is managed by a Board[4] currently comprised of four persons, three of whom are Independent Directors.[5]

3. FA, a Delaware limited liability company that is registered under the Advisers Act, serves as the investment adviser to the Company pursuant to an investment advisory agreement. FA also serves as investment adviser to each Existing Affiliated Fund.

4. Fundrise Lending LLC, an affiliate under common control with FA, holds various financial assets in a principal capacity. Fundrise Lending, LLC also originates real estate loans.

5. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each of which (i) would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, or (ii) does not meet the definition of investment company under the Act and qualifies as a REIT within the meaning of Section 856 of the Code because substantially all of its assets would consist of real properties.

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[6] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

7. Applicants represent that FA has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

8. If the requested Order is granted, the Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that when such opportunities arise, the Adviser to the relevant Regulated Funds is promptly notified and receives the same information about the opportunity as any other Adviser considering the opportunity for its clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies[7] and any Board-Established Criteria[8] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions.

9. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in any Potential

''Adviser'' means FA together with any future investment adviser that (i) controls, is controlled by or is under common control with FA, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund, any Future Affiliated Fund or any Fundrise Proprietary Account. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) (i) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (ii) that does not meet the definition of investment company under the Act and qualifies as a real estate investment company (''REIT'') within the meaning of Section 856 of the Internal Revenue Code (''Code'') because substantially all of its assets would consist of real properties, and (c) that intends to participate in the Co-Investment Program. ''Fundrise Proprietary Account'' means Fundrise Lending LLC, and any direct or indirect, wholly- or majority-owned subsidiary of FA that is formed in the future that, from time to time, may hold various financial assets in a principal capacity.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

[4] ''Board'' means the board of directors (or the equivalent) of the applicable Regulated Fund.

[5] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[6] ''Wholly-Owned Investment Sub'' means an entity (i) that is a wholly-owned subsidiary of a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund; (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to the application; and (iv) (A) would be an investment company but for Section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) qualifies as a REIT within the meaning of Section 856 of the Code because substantially all of its assets would consist of real properties.

[7] ''Objectives and Strategies'' means a Regulated Fund's investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

[8] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to such Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

10. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, such Adviser's investment committee will approve an investment amount to be allocated to each Regulated Fund and/or Affiliated Fund participating in the Potential Co-Investment Transaction. Applicants state further that, each proposed order amount may be reviewed and adjusted, in accordance with the Adviser's written allocation policies and procedures, by the Adviser's investment committee.[9] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[10]

11. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[11] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[12]

B. Follow-On Investments

12. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[13] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

13. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[14] If the Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

14. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[15] or (ii) a Non-Negotiated Follow-On Investment.[16] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

15. Applicants propose that Dispositions[17] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent

[9] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[10] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. Although each Regulated Fund will be a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a business development company subject to section 57(o) (''BDC'').

[11] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction as if the Regulated Fund were a BDC subject to section 57(o) of the Act.

[12] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[13] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[14] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[15] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[16] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[17] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[18]

16. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [19] or (ii) the securities are Tradable Securities [20] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

17. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

18. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application.

2. Co-Investment Transactions are prohibited by rule 17d–1 without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) the Adviser manages each of the Affiliated Funds and may be deemed to control any Future Regulated Fund and any Future Affiliated Fund, and (ii) the Adviser manages the Company pursuant its investment advisory agreement. Thus, each of the Affiliated Funds could be deemed to be a person related to the Company and the Future Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by rule 17d–1, and thus prohibited from participating in Co-Investment Transactions with each other. In addition, because the Fundrise Proprietary Accounts are controlled by, or under common control with, FA and, therefore, may be under common control with the Company, any future Advisers, and any Future Regulated Funds, the Fundrise Proprietary Accounts could be prohibited from participating in the Co-Investment Program.

3. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance

[18] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[19] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[20] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a). The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b). When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a). If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b). If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c). After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i). The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii). the transaction is consistent with:

(A). The interests of the Regulated Fund's equity holders; and

(B). the Regulated Fund's then-current Objectives and Strategies;

(iii). the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A). The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B). any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv). the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [21] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17 (e), (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[22] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[23]

[21] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[22] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[23] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i). The Adviser to such Regulated Fund or Affiliated Fund [24] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b). *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c). *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i). (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [25] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii). each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i). The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii). the making and holding of the Pre-Boarding Investments were not prohibited by Rule 17d–1 and records the basis for the finding in the Board minutes.

(c). *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i). *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Rule 17d–1.

(iv). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [26] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v). *No control.* The Affiliated Funds, the other Regulated Funds and their

limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[24] Any Fundrise Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[25] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[26] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b). *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i). (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[27] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii). it is a Non-Negotiated Follow-On Investment.

(c). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. Enhanced Review Follow-Ons.

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Rule 17d–1. The basis for the Board's findings will be recorded in its minutes.

(c). *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Rule 17d–1;

(iii). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date,

[27] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

currency, or denominations may be treated as the same security; and

(iv). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a). Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b). All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c). Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d). The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[28] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by an Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Adviser, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or (iii) in the case of the Adviser, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

[28] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16240 and #16241; TEXAS Disaster Number TX–00537]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 12/31/2019.

Incident: Sable Ridge Condominium Complex Fire.

Incident Period: 12/04/2019.

DATES: Issued on 12/31/2019.

Physical Loan Application Deadline Date: 03/02/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 10/01/2020.

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: Dallas

Contiguous Counties: Texas: Collin, Denton, Ellis, Kaufman, Rockwall, Tarrant.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.000
Homeowners without Credit Available Elsewhere	1.500
Businesses with Credit Available Elsewhere	7.750
Businesses without Credit Available Elsewhere	3.875
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	3.875
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16240 5 and for economic injury is 16241 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–28494 Filed 1–3–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2019–0006]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the U.S. Department of Health and Human Services, Office of Child Support Enforcement (OCSE).

DATES: The deadline to submit comments on the proposed matching program is February 5, 2020. The matching program will be applicable, once a minimum of 30 days after publication of this notice has elapsed, February 5, 2020. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* All comments received will be available for public inspection by contacting Mr. Ramsey at this street address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Norma Followell, Supervisory Team Lead, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 966–5855, or send an email to *Norma.Followell@ssa.gov.*

SUPPLEMENTARY INFORMATION: This computer matching agreement, hereinafter ''agreement,'' governs a matching program between OCSE and SSA. The agreement covers the following information exchange operations between OCSE and SSA from the National Directory of New Hires (NDNH): Online query access for Supplemental Security Income (SSI), Disability Insurance (DI), and Ticket-to-Work and Self-Sufficiency (Ticket) programs, and SSI Quarterly Wage batch match. This agreement also governs the use, treatment, and safeguarding of the information exchanged. OCSE is the ''source agency'' and SSA is the ''recipient agency.'' This agreement assists SSA (1) in establishing or verifying eligibility or payment amounts, or both under the SSI program; (2) in establishing or verifying eligibility or continuing entitlement under the DI program; and (3) in administering the Ticket programs. SSA evaluates the cost-benefits, including programmatic and operational impact, which NDNH information has on SSA programs and operations.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and OCSE.

Authority for Conducting the Matching Program: The legal authorities for disclosures under this agreement are the Social Security Act (Act) and the Privacy Act of 1974, as amended. Section 453(j)(4) of the Act provides that OCSE shall provide the Commissioner of Social Security with all information in the NDNH. 42 U.S.C. 653(j)(4). SSA has authority to use data to determine entitlement and eligibility for programs it administers pursuant to sections 453(j)(4), 1631(e)(1)(B) and (f), and 1148(d)(1) of the Act. 42 U.S.C. 653(j)(4), 1320b–19(d)(1), and 1383(e)(1)(B) and (f). Disclosures under this agreement shall be made in accordance with 5 U.S.C. 552a(b)(3), and in compliance with the matching procedures in 5 U.S.C. 552a(o), (p), and (r).

The Commissioner of Social Security is required to verify eligibility of a recipient or applicant for SSI using independent or collateral sources. SSI benefits may not be determined solely based on declarations by the applicant concerning eligibility factors or other relevant facts. Information is also obtained, as necessary, in order to assure that SSI benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. Section 1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)).

Subsection 1631(f) of the Act (42 U.S.C. 1383(f)) provides that ''the head of any federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of

benefits, or verifying information with respect thereto.''

Section 1148(d)(1) of the Act (42 U.S.C. 1320b–19(d)(1)) requires SSA to verify earnings of beneficiaries/recipients to ensure accurate payments to employer network providers under the Ticket-to-Work program.

Purpose(s): This computer matching agreement, hereinafter ''agreement,'' governs a matching program between OCSE and SSA. The agreement covers the following information exchange operations between OCSE and SSA from the National Directory of New Hires (NDNH): Online query access for Supplemental Security Income (SSI), Disability Insurance (DI), and Ticket-to-Work and Self-Sufficiency (Ticket)programs; and SSI Quarterly Wage batch match.

This agreement also governs the use, treatment, and safeguarding of the information exchanged. OCSE is the ''source agency'' and SSA is the ''recipient agency,'' as defined by the Privacy Act. 5 U.S.C. 552a(a)(9) and (11).

This agreement assists SSA:

(1) In establishing or verifying eligibility or payment amounts, or both under the SSI program;

(2) in establishing or verifying eligibility or continuing entitlement under the DI program; and

(3) in administering the Ticket programs.

These activities include overpayment avoidance and recovery for all three programs. SSA evaluates the cost-benefits, including programmatic and operational impact, which NDNH information has on SSA programs and operations.

The Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988, provides that no record contained in a system of records (SOR) may be disclosed for use in a computer matching program except pursuant to a written agreement containing specified provisions. 5 U.S.C. 552a(o). SSA and OCSE are executing this agreement to comply with the Privacy Act of 1974, as amended, and the regulations and guidance promulgated thereunder. OCSE and SSA have been parties to matching agreements and recertification for these purposes since 2001.

The SSA component responsible for this agreement and its contents is the Office of Privacy and Disclosure. The responsible component for OCSE is the Division of Federal Systems. This agreement is applicable to personnel, facilities, and information systems of SSA and OCSE involved in the processing and storage of NDNH information. Personnel are defined as employees, and contractors/agents of OCSE and SSA.

Categories of Individuals: The SSA finder file for the SSI quarterly match will contain approximately 8.6 million records of individuals. For online queries, SSA will only query one record at a time and queries of individual records should not exceed 14 million in a given year.

The NDNH contains approximately 1.4 billion new hire, quarterly wage, and unemployment insurance records, which represents the most recent 24 months of information. In accordance with section 453(j)(4) of the Act, NDNH information provided to SSA by OCSE will contain all the available data elements from the new hire, quarterly wage, and unemployment insurance information, if any, pertaining to the individuals whose records are contained in the SSA finder file or online query. 42 U.S.C. 653(j)(4).

Categories of Records:

1. Quarterly Batch Match (SSI). SSA's finder file is matched against the quarterly wage and unemployment insurance information in OCSE's NDNH.

a. SSA will provide electronically to OCSE the following data elements in the finder file:

- Individual's Social Security number (SSN)
- Name

b. OCSE will provide electronically to SSA the following data elements from the NDNH in the quarterly wage file:

- Quarterly wage record identifier
- For employees:
  (1) Name (first, middle, last)
  (2) SSN
  (3) Verification request code
  (4) Processed date
  (5) Non-verifiable indicator
  (6) Wage amount
  (7) Reporting period
- For employers of individuals in the quarterly wage file of the NDNH:
  (1) Name
  (2) Employer identification number
  (3) Address(es)
- Transmitter agency code
- Transmitter state code
- State or agency name

c. OCSE will provide electronically to SSA the following data elements from the NDNH in the unemployment insurance file:

- Unemployment insurance record identifier
- Processed date
- SSN
- Verification request code
- Name (first, middle, last)
- Address
- Unemployment insurance benefit amount
- Reporting period
- Transmitter agency code
- Transmitter state code
- State or agency name

2. Online Query Access (SSI, DI, and Ticket programs). SSA will access OCSE's web service when making online requests for NDNH records:

a. Data element to initiate a query in SSA's Permission Module:

- Individual's SSN

b. Data elements on quarterly wage screen:

- Quarterly wage record identifier
- Date report processed
- Name/SSN verified
- For Employees:
  (1) SSN
  (2) Name (first, middle, last)
  (3) Wage amount
  (4) Reporting period
- For Employers:
  (1) Name
  (2) Employer identification number
  (3) Employer FIPS code (if present)
  (4) Address(es)

c. Data elements on the new hire screen:

- New hire record identifier
- Name/SSN verified
- Date report processed
- For Employees:
  (1) SSN
  (2) Name (first, middle, last)
  (3) Date of hire
- For Employers:
  (1) Name
  (2) Employer identification number
  (3) Employer FIPS code (if present)
  (4) Address(es)

d. Data elements on the unemployment insurance screen:

- Unemployment insurance record identifier
- Name/SSN verified
- SSN
- Name (first, middle, last)
- Address
- Unemployment insurance benefit amount
- Reporting period
- Payer state
- Date report processed

System(s) of Records: OCSE and SSA published notice of the relevant SORs in the **Federal Register**. For the batch process, SSA's SOR is the Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), SSA/OASSIS, 60–0103 last fully published at 71 FR 1830 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007), and at 83 FR 31250–31251 (July 3, 2018), and at 83 FR 54969 (November 1, 2018).

For the query process, SSA's SORs are the SSR; Completed Determination Record-Continuing Disability Determination file (CDR–CDD), 60–0050, last fully published at 71 FR 1813 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007); and the Master Beneficiary Record (MBR), 60–0090, last fully published at 71 FR 1826 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007, and at 78 FR 40542 (July 5, 2013), and at 83 FR 31250–31251 (July 3, 2018), and at 83 FR 54969 (November 1, 2018); the Electronic Disability (eDIB) Claim File, (60–0320) last fully published at 68 FR 71210 (December 22, 2003), and amended at 72 FR 69723 (December 10, 2007), and at 83 FR 54969 (November 1, 2018); the Ticket-to-Work and Self-Sufficiency Program Payment Database, (60–0295) last fully published at 66 FR 17985 (April 4, 2001), and amended at 72 FR 69723 (December 10, 2007), and at 83 FR 54969 (November 1, 2018); and the Ticket-to-Work Program Manager (PM) Management Information System, (60–0300) last fully published at 66 FR 32656 (June 15, 2001), and amended at 72 FR 69723 (December 10, 2007), and at 83 FR 54969 (November 1, 2018). SSA has the appropriate routine uses to disclose information to the NDNH under this agreement.

OCSE will match SSA information against the new hire, quarterly wage, and unemployment insurance information furnished by state and federal agencies maintained in its SOR ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, established by publication in the **Federal Register** on April 2, 2015, at 80 FR 17906. The disclosure of NDNH information by OCSE to SSA constitutes a ''routine use'', as defined by the Privacy Act. 5 U.S.C. 552a(b)(3). Routine use (9) of the system of records authorizes disclosure of NDNH information to SSA, 80 FR 17906, 17907 (April 2, 2015).

SSA will access the OCSE web service when making online queries for new hire, quarterly wage, and unemployment insurance information in the NDNH. To comply with limitations on disclosure and to prohibit browsing, SSA access is restricted by anti-browsing technology (permission modules) to only those Social Security numbers (SSN) that have a direct business relationship with SSI, DI, or Ticket program (that is, the record must have a valid SSI, DI, or Ticket payment or application issue). If no business relationship exists with SSA, OCSE denies access to NDNH and the user is unable to proceed. If a business relationship exists with SSA, SSA can access the NDNH via the OCSE web service to display SSN-specific new hire, quarterly wage, or unemployment insurance information in the NDNH. The MFQM or eView extracts information from SSA's SSR (for SSI recipients) or CDR–CDD (for ticket holders and disability beneficiaries) to facilitate query access.

[FR Doc. 2019–28475 Filed 1–3–20; 8:45 am]

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DEPARTMENT OF STATE

[Delegation of Authority No. 480]

Delegation of Authority to the Director of the Office of U.S. Foreign Assistance Resources Under Section 7019 of the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2019

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 7019(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 (Div. F, Pub. L. 116–6), I hereby delegate to the Director of the Office of U.S. Foreign Assistance Resources, to the extent authorized by law, the authority to determine whether a deviation from the amounts specifically designated in the tables in the Joint Explanatory Statement exceeding the specified percentage is necessary to respond to significant, exigent, or unforeseen events or to address other exceptional circumstances directly related to the national security interest of the United States.

This authority may be re-delegated to the Deputy Director, Office of U.S. Foreign Assistance Resources.

The Secretary or the Deputy Secretary may exercise any function or authority delegated herein. Any reference in this delegation of authority to a statute shall be deemed to be a reference to such statute as amended from time to time and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute. This delegation of authority does not repeal or otherwise affect any other delegation of authority currently in effect.

This delegation of authority will be published in the **Federal Register**.

Dated: December 23, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–28521 Filed 1–3–20; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 167 (Sub-No. 1194X)]

Consolidated Rail Corporation—Abandonment Exemption—in Indianapolis, Ind.

Consolidated Rail Corporation (Conrail) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 1.28 miles of rail line from approximately milepost 179.52± to approximately milepost 180.80±, an out-of-service section of a rail line known as Thorne Secondary, Line Code 8206, in the City of Indianapolis, Ind. (the Line). The Line traverses U.S. Postal Service Zip Code 46219.

Conrail has certified that: (1) No local or overhead traffic has moved over the Line for at least two years; (2) any overhead traffic that has or could move over the Line can be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.7 and 1105.8 (environmental and historic report) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] has been received, this exemption will be effective on February 5, 2020, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation)

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 16, 2020.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 27, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Conrail's representative, Benjamin C. Dunlap, Jr., Nauman, Smith, Shissler and Hall, LLP, 200 North Third Street, 18th Floor, Harrisburg, PA 17101.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Conrail has filed a combined environmental and historic report that addresses the potential effects of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 31, 2020. The EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Conrail shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by Conrail's filing a notice of consummation by January 6, 2021, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: December 31, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–28509 Filed 1–3–20; 8:45 am]

BILLING CODE 4915–01–P

cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: In September of 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and corrects a ministerial error in a previously announced exclusion.

DATES: The product exclusions announced in this notice will apply as of the September 24, 2018, effective date of the $200 billion action, to August 7, 2020. The amendment announced in this notice is retroactive to the date the original exclusion was published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), and 84 FR 69012 (December 17, 2019).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the Trade Representative established a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $200 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative would

periodically announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September, October, November, and December 2019. *See* 84 FR 49591, 84 FR 57803, 84 FR 61674, 84 FR 65882, and 84 FR 69012. The Office of the United States Trade Representative regularly updates the status of each pending request on the USTR Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005.*

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in 2 ten-digit HTSUS subheadings and 66 specially prepared product descriptions, which cover 81 separate exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex, and not by the product descriptions set out in any particular request for exclusion.

To correct a technical error and in order to conform to the Trade Representative's intent to grant an exclusion requested, the Annex to this notice also includes amendments to notes in the Harmonized Tariff Schedule of the United States.

Paragraph A, subparagraphs (3)–(7) are conforming amendments to the HTSUS reflecting the modifications made by the Annex.

Paragraph B, subparagraphs (1)–(2) are amendments to U.S. note 20(ll)(66) published at 84 FR 57803 (October 28, 2019) and U.S. note 20(mm)(34) published at 84 FR 61674 (November 13, 2019) reflecting modifications made to certain HTSUS statistical reporting numbers that will take effect January 1, 2020.

Paragraph C, fixes a technical error in U.S. note 20(b) to subchapter III of chapter 99 of the HTSUS.

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.37 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1-General'', respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
''9903.88.37	Articles the product of China, as provided for in U.S. note 20(pp) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable sub-heading''.		

2. by inserting the following new U.S. note 20(pp) to subchapter III of chapter 99 in numerical sequence:

''(pp) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04. See 83 FR 47974 (September 21, 2018) and 84 FR 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 or in heading 9903.88.04 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

(1) 8712.00.1510

(2) 8712.00.1550

(3) Nonwoven wipes, impregnated with organic surfactant preparations of a kind used to remove hair-color stains from the skin, put up for retail sale in canisters each containing 100 wipes (described in statistical reporting number 3401.11.5000)

(4) Endless synchronous belts of vulcanized rubber, molded polyurethane, neoprene, or welded urethane, each of an outside circumference of 60 cm or more but not more than 77 cm and a width of 2.5 cm or more but not exceeding 4 cm, weighing 0.18 kg or more but not exceeding 0.45 kg (described in statistical reporting number 4010.35.9000)

(5) Briefcases with outer surface of leather, each measuring no more than 37 cm by 45 cm by 17 cm (described in statistical reporting number 4202.11.0030)

(6) Storage containers of paulownia wood, each measuring 8 cm or more but not over 41 cm in width, 8 cm or more but not over 41 cm in depth and 9 cm or more but not over 41 cm in height (described in statistical reporting number 4420.90.8000)

(7) Woven fabric of 100 percent textured polyester filaments, dyed, weighing more than 170 g/m^2, measuring not more than 310 cm in width (described in statistical reporting number 5407.52.2060)

(8) Woven fabric of synthetic filament yarn containing 85 percent or more by

weight of textured polyester filaments, dyed, measuring 249 cm in width, weighing more than 170 g/m² (described in statistical reporting number 5407.52.2060)

(9) Woven dupioni fabric wholly of non-textured dyed polyester filaments, weighing not more than 170 g/m², measuring not more than 310 cm in width (described in statistical reporting number 5407.61.9930)

(10) Woven fabric wholly of polyester, dyed, not flat, containing non-textured polyester filaments, weighing not more than 170 g/m², measuring not over 310 cm in width (described in statistical reporting number 5407.61.9930)

(11) Woven fabric wholly of polyester, dyed, containing non-textured polyester filaments, weighing more than 170 g/m², measuring not over 310 cm in width (described in statistical reporting number 5407.61.9935)

(12) Woven fabric containing by weight 47 percent of nylon and 53 percent of polyester, dyed, containing textured filaments, weighing not more than 170 g/m², measuring greater than 274 cm in width (described in statistical reporting number 5407.72.0015)

(13) Woven dyed fabrics wholly of spun polyester, weighing more than 240 g/m² and measuring not more than 310 cm in width (described in statistical reporting number 5512.19.0090)

(14) Woven dyed 3-thread twill fabrics containing by weight 65 percent of polyester and 35 percent of cotton staple fibers, not napped, weighing more than 200 g/m² and exceeding 310 cm in width (described in statistical reporting number 5514.22.0020)

(15) Storage containers of twisted paper rope, each measuring not less than 8 cm but not more than 39 cm in length, not less than 8 cm but not more than 39 cm in width and not less than 9 cm but not more than 57 cm in height (described in statistical reporting number 5609.00.4000)

(16) Woven dyed embroidery fabrics containing by weight 55 percent of polyester and 45 percent of nylon, weighing less than 115 g/m² and measuring 289 cm in width (described in statistical reporting number 5810.92.9080)

(17) Vault doors of stamped, welded and powder-coated 12-gauge carbon steel, each measuring 2 m or more in height, 81 cm or more but not more than 92 cm in width and 7.7 cm in thickness, each fitted with nine locking bolts, a slip-clutch handle and a programmable electric lock with keypad, with mechanical key override, presented with matching door frame (described in statistical reporting number 7308.30.5050)

(18) Steel staples suitable for use in powder-actuated handtools, not threaded, each weighing 37 g or more but not over 41 g, measuring 2.8 cm or more but not over 12.7 cm in height, 6.4 cm or more but not over 7.4 cm in width and 3.3 cm or more but not over 12.2 cm in depth (described in statistical reporting number 7317.00.2000)

(19) Safes of 16 gauge carbon steel, each stamped, welded and powder-coated, with a programmable electric lock with keypad, mechanical key override, measuring 27 cm or more but not over 33 cm in length, 21 cm or more but not over 23 cm in width and 6 cm or more but not over 23 cm in depth (described in statistical reporting number 7323.99.9080)

(20) Fish tapes of steel and plastics, each weighing 516 g or more but not over 3,810 g and measuring no greater than 46 cm by 34 cm by 5 cm (described in statistical reporting number 7326.90.8688)

(21) Steel clamps with rubber insulation, each weighing not more than 45.4 grams and measuring not more than 26 mm in height, not more than 54 mm in width and not more than 97 mm in depth (described in statistical reporting number 7326.90.8688)

(22) Telescoping poles of steel, spring loaded, with ends of plastic, each measuring not less than 127 cm but not more than 314 cm in height and not more than 2.6 cm in diameter (described in statistical reporting number 7326.90.8688)

(23) Awning casting endplates, of aluminum, weighing not less than 0.1 kg, measuring not less than 17 cm in length, not less than 10 cm in width, and not less than 1 cm in height (described in statistical reporting number 7610.90.0080)

(24) Decorative cast aluminum endcaps, of a kind used with structural elements of roof-mounted patio awnings for recreational vehicles (RVs), each measuring not more than 19 cm in length, not more than 11.5 cm in width and not more than 3 cm in thickness, weighing not more than 0.15 kg each (described in statistical reporting number 7610.90.0080)

(25) Clips of aluminum shaped like the letter ''J'', with the diameter of the loop not exceeding 13 mm, each with a hole drilled through the long part of the ''J'' (described in statistical reporting number 7616.99.5190)

(26) Telescoping poles of aluminum, spring loaded, with ends of plastic, each measuring not less than 1.5 m but not more than 3.7 m in height and 2.9 cm or more but not exceeding 3.6 cm in diameter (described in statistical reporting number 7616.99.5190)

(27) Awning casting pivots, of zinc coated aluminum, weighing not less than 0.6 kg, measuring not less than 9 cm in length, not less than 6 cm in width, and not less than 4 cm in height (described in statistical reporting number 7907.00.6000)

(28) Hand tools of steel, similar to pliers, each capable of crimping, stripping and cutting wire, weighing at least 170 g or more but not exceeding 460 g, and measuring not more than 26 cm by jaw opening size of 30 cm by 11 cm by 2.5 cm (described in statistical reporting number 8203.20.6060)

(29) Hand tools of steel similar to pliers, designed for crimping electrical connectors and cutting wire, each weighing 333 g and measuring no more than 26 cm by 11 cm by 2.5 cm (described in statistical reporting number 8203.20.6060)

(30) Cutting parts for rock drilling or earth boring tools, each containing by weight over 0.2 percent of chromium, molybdenum or tungsten or over 0.1 percent of vanadium (described in statistical reporting number 8207.19.3090)

(31) Sets of flatware of stainless steel, containing no article plated with precious metal, put up for retail sale (described in statistical reporting number 8215.20.0000)

(32) Hydraulic valve lifters of steel with rollers, suitable for use solely or principally with spark-ignition internal combustion piston engines (other than for aircraft engines, marine propulsion engines or for vehicles of subheading 8701.20, or headings 8702, 8703 or 8704), each measuring 5 cm or more but not over 13 cm in length and 2.5 cm or more but not over 3.9 cm in diameter and weighing 135 g or more but not over 410 g (described in statistical reporting number 8409.91.9990)

(33) Solid valve lifters of steel, suitable for use solely or principally with spark-ignition internal combustion piston engines (other than for aircraft engines, marine propulsion engines or for vehicles of subheading 8701.20, or headings 8702, 8703 or 8704), each measuring 19 mm or more but not over 114 mm in length and 6 mm or more but not over 26 mm in diameter and weighing 20 g or more but not over 250 g (described in statistical reporting number 8409.91.9990)

(34) Hand pumps (other than for fuel or lubricants, not fitted or designed to be fitted with a metering device), each used to dispense a metered quantity of liquid soap or sanitizer (described in statistical reporting number 8413.20.0000)
(35) Lubricating pumps for internal combustion piston engines (described in statistical reporting number 8413.30.9060)
(36) Hand- or foot-operated air pumps, each weighing 400 g or more but not over 3 kg, with a maximum pressure of 1.52 MPa, imported with adapters for valves for tires and inner tubes (described in statistical reporting number 8414.20.0000)
(37) Ventilation fans for motor vehicles, consisting of a 12 V DC reversible multispeed electric motor drawing 5 A, with axial fan blade, electrically operating baffle, electric keypad and circuit board and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)
(38) Ventilation fans for motor vehicles, consisting of a 12 V DC single speed electric motor drawing 5 A, with axial fan blade, manual baffle, rotary switch and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)
(39) 12 V fans of a kind used to disperse fragrance oils, measuring over 10 but not over 11 cm in diameter (described in statistical reporting number 8414.59.6595)
(40) Portable air compressors, each delivering under 0.57 cubic meters per minute (described in statistical reporting number 8414.80.1685)
(41) Winches powered by an electric motor, each weighing 9 kg or more but not exceeding 14 kg, with a pulling capacity of 1,130 kg or more but not exceeding 2,730 kg (described in statistical reporting number 8425.31.0100)
(42) Winches powered by an electric motor, each with a pulling capacity of 4,300 kg or more but not exceeding 7,940 kg (described in statistical reporting number 8425.31.0100)
(43) Ratchet tie down straps, each consisting of straps of textiles measuring not less than 25 mm and not more than 105 mm in width and not more than 12.5 m in length, steel hooks at opposite ends of the straps and a gear and pawl mechanism for adjusting the length of the whole (described in statistical reporting number 8479.89.9499)
(44) Wireless battery chargers for mobile phones, each in the form of a picture frame incorporating a wireless charger or a stand incorporating a wireless charger that permits the mobile phone to be charged while standing on end (described in statistical reporting number 8504.40.8500)
(45) Alternators for motor vehicle charging systems (described in statistical reporting number 8511.50.0000)
(46) Alarms to be installed in motor vehicles, each of which provides either a warning sound or a warning sound and a flashing light when a motor vehicle is being operated in reverse (described in statistical reporting number 8512.30.0040)
(47) Projectors (''trumpets'') of plastics for air horns (described in statistical reporting number 8512.90.2000)
(48) Color video cameras for use with microscopes, each camera with C-mount lens mount, weighing not more than 87 g, measuring not more than 109 mm in length and 31 mm in diameter, presented with a cable measuring not more than 1.5 m in length (described in statistical reporting number 8525.80.3010)
(49) Digital color video cameras for use with microscopes, each camera with 10 megapixel resolution, weighing not more than 175 g, measuring 63 mm by 37 mm in length, presented with USB cable, reduction lens, eyepiece adapters, software CD and calibration slide (described in statistical reporting number 8525.80.3010)
(50) Digital color video cameras for use with microscopes, each camera with autofocus, C-mount lens mount, 1080p resolution, weighing not more than 450 g, measuring not more than 67 mm by 67 mm by 81 mm, presented with AC power adapter and power cable (described in statistical reporting number 8525.80.3010)
(51) Ultraviolet lamps used for skin tanning purposes, packaged for retail sale and weighing more than 5 kg but less than 10 kg (described in statistical reporting number 8539.49.0040)
(52) Hand held, battery-powered electrical devices that administer transcutaneous electrical nerve stimulation (TENS) and electrical muscle stimulation (EMS) via adhesive electrode pads attached to the skin (described in statistical reporting number 8543.70.8500)
(53) Insulated conductors, not of a kind used for telecommunications, for a voltage not exceeding 1,000 V, each with polyvinyl chloride (PVC) covers and connectors at each end in bundles of 3, 5 or 6 for use in connecting patients to monitoring devices (described in statistical reporting number 8544.42.9090)
(54) Electrical insulators (''wire nuts'') of plastics and steel (described in statistical reporting number 8546.90.0000)
(55) Motor mount kits each consisting of 3 to 5 components, each of stainless-steel or aluminum combined with a heat resistant rubber material and with holes machined for mounting the engine to the car or truck body, designed for use in aftermarket automotive repair (described in statistical reporting number 8708.99.5500)
(56) Wear bars comprising strips of carbide for the vehicles of 8703.10.10 (described in statistical reporting number 8708.99.8180)
(57) Bicycle saddles, each having a cover of plastics, man-made textile fabrics or a combination of the two (described in statistical reporting number 8714.95.0000)
(58) Compound binocular optical microscopes (other than stereoscopic microscopes and microscopes for photomicrography, cinemicrography or microprojection), each with magnification of 40X or more but not exceeding 1,000X, weighing not more than 3 kg (described in statistical reporting number 9011.80.0000)
(59) Compound optical microscopes (other than stereoscopic microscopes and microscopes for photomicrography, cinemicrography or microprojection), each with magnification of 40X or more but not exceeding 400X, weighing not more than 15 kg (described in statistical reporting number 9011.80.0000)
(60) Stackable upholstered metal chairs for religious worship settings, capable of interlocking with each other, each with attached holders and racks (described in statistical reporting number 9401.71.0031)
(61) Hunting stands of steel or aluminum (including ladder stands, pod stands, hang-on stands and climbing stands), each of which allows one or more hunters to ascend to a height and sit while waiting for game animals to appear (described in statistical reporting number 9401.79.0035)
(62) Parts of chairs of unfinished plywood, including bodies, legs and arms (described in statistical reporting number 9401.90.4080)
(63) Chair frames of metal, each with integral bookshelf, capable of being stacked (described in statistical reporting number 9401.90.5081)
(64) Folding wheeled trays, each having a fixed height of no more than 90 cm and a tray measuring not more than 37 cm by 40 cm (described in

statistical reporting number 9403.20.0090)

(65) Wheeled trays, each with 5 wheels, 3 bowls of plastic with suction cup bottoms and adjustable height from 65 cm to 108 cm (described in statistical reporting number 9403.20.0090)

(66) Baby crib liners, each composed of two pieces of multi-layer warp polyester knit mesh without any padding, one measuring no more than 29 cm by 283 cm and the other measuring no more than 29 cm by 210 cm (described in statistical reporting number 9403.90.6005)

(67) Flexible strips having embedded light-emitting diodes electrically connected to a molded electrical end connector, each strip wound onto a reel measuring not more than 25 cm in diameter and not more than 1.5 cm in width (described in statistical reporting number 9405.40.8440)

(68) Light boxes, each measuring not more than 32 cm by 58 cm by 12 cm, weighing less than 10 kg, with two biaxial fluorescent lamps that provide light therapy for seasonal and sleep disorders (described in statistical reporting number 9405.40.8440)''

3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:

a. by deleting the word ''or'' where it appears after the phrase ''U.S. note 20(nn) to subchapter III of chapter 99;''; and

b. by inserting the phrase ''; or (7) heading 9903.88.37 and U.S. note 20(pp) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(oo) to subchapter III of chapter 99''.

4. by amending U.S. note 20(f) to subchapter III of chapter 99;

a. by deleting the word ''or'' where it appears after the phrase ''U.S. note 20(nn) to subchapter III of chapter 99;''; and

b. by inserting the phrase ''; or (7) heading 9903.88.37 and U.S. note 20(pp) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(oo) to subchapter III of chapter 99''.

5. by amending the first sentence of U.S. note 20(g) to subchapter III of chapter 99:

a. by deleting ''or'' where it appears after ''U.S. note 20(ll) to subchapter III of chapter 99''; and

b. by inserting ''(3) heading 9903.88.36 and U.S. note 20(oo) to subchapter III of chapter 99; or (4) heading 9903.88.37 and U.S. note 20(pp) to subchapter III of chapter 99'' after ''U.S. note 20(mm) to subchapter III of chapter 99''.

6. by amending the Article Description of heading 9903.88.03:

a. by deleting ''9903.88.35 or'' and inserting ''9903.88.35,'' in lieu thereof; and

b. by inserting ''or 9903.88.37,'' after ''9903.88.36,''.

7. By amending the Article Description of heading 9903.88.04:

a. By deleting ''9903.88.34 or'' and inserting ''9903.88.34,'' in lieu thereof; and

b. By inserting ''or 9903.88.37,'' after ''9903.88.36,''.

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

a. U.S. note 20(ll)(66) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting ''prior to January 1, 2020; described in statistical reporting number 8708.70.4546 effective January 1, 2020'' after ''8708.70.4545''.

b. U.S. note 20(mm)(34) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting ''prior to January 1, 2020; described in statistical reporting number 8708.70.4546 effective January 1, 2020'' after ''8708.70.4545''.

C. U.S. note 20(b) to subchapter III of chapter 99 of the HTSUS is amended by deleting ''or (7) heading 9903.88.19'' and inserting ''or (8) heading 9903.88.19'' in lieu thereof.

[FR Doc. 2019–28506 Filed 1–3–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0097; Notice 1]

FCA US, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: FCA US LLC (f/k/a Chrysler Group LLC) ''FCA US'' has determined that certain model year (MY) 2019 Chrysler Pacifica motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less.* FCA US filed a noncompliance report dated August 27, 2019. FCA US subsequently petitioned NHTSA on September 20, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of FCA US's petition.

DATES: The closing date for comments on the petition is February 5, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also

be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

FCA US has determined that certain MY 2019 Chrysler Pacifica motor vehicles do not fully comply with paragraphs S4.3(a) and (b) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less* (49 CFR 571.110). FCA US filed a noncompliance report dated August 27, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* FCA US subsequently petitioned NHTSA on September 20, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of FCA US's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

II. Vehicles Involved

Approximately 350 MY 2019 Chrysler Pacifica motor vehicles, manufactured between October 4, 2018, and July 3, 2019, are potentially involved.

III. Noncompliance

FCA US explains that the noncompliance is that the subject vehicles tire placard label erroneously states the seating capacity as seven occupants rather than eight occupants, and shows a combined occupant and cargo weight of 1,150 lbs. rather than 1,240 lbs. as required by paragraph S4.3 of FMVSS No. 110.

IV. Rule Requirements

Paragraphs S4.3(a) and S4.3(b) of FMVSS No. 110 include the requirements relevant to this petition. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in paragraphs S4.3(a), vehicle capacity weight expressed as the combined weight of occupants and cargo and S4.3(b) designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location.

V. Summary of FCA US's Petition

The following views and arguments presented in this section, are the views and arguments provided by FCA US. They have not been evaluated by the Agency and do not reflect the views of the Agency.

FCA US described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. FCA US submitted the following views and arguments in support of the petition:

1. While the number of occupants and the calculated weight are incorrect on the vehicle placard label, the calculated weight for seven occupants (1,150 lbs.) is below the calculated weight for eight occupants (1,240 lbs.), and therefore, there is no risk of vehicle overloading.

2. All information required for maintaining and/or replacing the front and rear tires is correct on the vehicle placard of the affected vehicles. In fact, the recommended cold tire inflation pressures for both the seven occupants and the eight occupant vehicles are the same. Therefore, there is no risk of under-inflation.

3. All other applicable requirements of FMVSS No. 110 have been met.

4. The vehicle certification label is correct. Vehicles with seven occupants and eight occupants share the same Gross Vehicle Weight Rating (6055 lbs.), and front and rear Gross Axle Weight Rating (2950 lbs. and 3200 lbs., respectively).

5. The number of seats and the number of safety belts installed in the vehicle will clearly indicate to a vehicle owner the actual seating capacity, the rear seating of the affected vehicles contains six seat belt assemblies, and provides adequate space for six people to occupy the rear seats. Further, the vehicle in fact does accommodate six occupants, and not five as labeled.

6. FCA US is not aware of any crashes, injuries, or customer complaints associated with this condition.

7. NHTSA has previously granted inconsequential treatment for FMVSS 110 noncompliance for incorrect vehicle placard seated capacity values. Examples of the agency granting a similar inconsequentiality petition for vehicle placard incorrect seated capacity are:

- General Motors, LLC, 79 FR 69557 (November 21, 2014)
- Ford Motor Company, 74 FR 69373 (December 31, 2009)
- BMW of North America, LLC, a Subsidiary of BMW AG, 78 FR 43964 (July 22, 2013)

FCA US concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that FCA US no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after FCA US notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–28472 Filed 1–3–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0078; Notice 1]

Jayco, Inc, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Jayco, Inc., (Jayco) has determined that certain model year (MY) 2020 travel trailers, manufactured by Jayco, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less.* Jayco filed a noncompliance report dated July 16, 2019. In coordination with Jayco, Starcraft RV (Starcraft) and Highland Ridge RV (Highland), subsidiaries of Jayco, also filed noncompliance reports dated July 17, 2019. Jayco subsequently petitioned NHTSA on July 31, 2019, and later amended that petition on September 26, 2019 and November 6, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Jayco's petition.

DATES: The closing date for comments on the petition is February 5, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

Jayco has determined that certain MY 2020 travel trailers, manufactured by Jayco, do not fully comply with paragraph S4.3.5 of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less* (49 CFR 571.110). Jayco filed a noncompliance report dated July 16, 2019, and in addition, Starcraft and Highland, subsidiaries of Jayco, also filed noncompliance reports dated July 17, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Jayco subsequently petitioned NHTSA on July 31, 2019, and later amended that petition on September 26, 2019 and November 6, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Jayco's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercises of judgment concerning the merits of the petition.

II. Trailers Involved

Approximately 6,354 MY 2020 Jayco, approximately 1,006 Starcraft, and approximately 814 Highland travel trailers, manufactured between May 1, 2019, and June 27, 2019, are potentially involved.

In Jayco's petition, they stated that the total number of vehicles affected is 8,983, however, that number also includes travel trailers sold in Canada. NHTSA can only grant exemption for vehicles sold in the United States, totaling approximately 8,174 vehicles.

III. Noncompliance

Jayco explains that the noncompliance is that the subject travel trailers are equipped with vehicle placards that show the incorrect vehicle capacity weight and an extra character in the recommended tire inflation pressure and, therefore, do not meet the requirements set forth in paragraph S4.3.5 of FMVSS No. 110. Specifically, the vehicle placards show the vehicle weight capacity as 80 kg when it should be 807 kg. Also, the recommended tire inflation pressure for the rear tire states 552 IKPA and the spare tire states 552 7KPA when they should read 552 KPA.

IV. Rule Requirements

Paragraphs S4.3.5 of FMVSS No. 110 includes the requirements relevant to this petition. Each trailer, except for an incomplete vehicle, must show the information specified in paragraphs S4.3(c) through (g), and may show the information specified in paragraph S4.3(h) and (i), on a placard permanently affixed proximate to the certification label. Each trailer, on the vehicle placard, contains a cargo capacity statement expressed as ''The weight of cargo should never exceed XXX kilograms or XXX pounds.'' A vehicle manufacturer's recommended cold tire inflation pressure for front, rear, and spare tires, are subject to the limitations of paragraph S4.3.4.

V. Summary of Jayco's Petition

The following views and arguments presented in this section, V. Summary of Jayco's Petition, are the views and arguments provided by Jayco. They have not been evaluated by the Agency and do not reflect the views of the Agency.

Jayco described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. Jayco

submitted the following views and arguments in support of the petition:

1. The ''should not exceed'' weight of cargo shown as 80 kg on the Tire Placard Label is in error and should be 807 kg. Jayco believes this information is redundant in that the cargo carrying capacity (CCC) label depicts the same information required by FMVSS No. 110 paragraph S4.3 and is correctly shown as the 807 kg.

2. The cold tire inflation pressure shown as 552 KPA, 80 PSI, is printed with an extra character for the rear and spare tire. Jayco believes this error is inconsequential to vehicle safety in that the correct information can be found on the sidewall of the tire.

3. The top section of the Federal label depicts the exact same information as the tire placard, with the tire size dimensions and the cold pressure inflation values of 552 KPA/80 PSI.

4. The bottom section of the Federal label depicts the CCC of the trailer including the weights with the fresh water and the waste water tanks full.

5. The owner's manual for Jayco, StarCraft, and Highland instructs an owner on the loading of their vehicle and where to find the required ratings that are displayed on the Federal Certification Label. The owner's manuals are also available on the company website at *www.jayco.com.*

6. The Manufacturer's Certificate of Origin (MCO) also contains both the Gross Vehicle Weight Rating (GVWR) and the unloaded vehicle weight (UVW). The difference in these two numbers would also give the owner the available CCC of the trailer.

7. The most important time for RV purchasers to have the CCC information is at the point-of-sale. Almost all of the trailers affected by this noncompliance have been purchased already by a consumer. Jayco has had no complaints or inquiries regarding CCC from any of its owners or dealers on the affected models.

8. NHTSA has previously granted similar inconsequential petitions with respect to FMVSS No. 110. *See* 84 FR 25117 (May 30, 2019).

Jayco concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject trailers that Jayco no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant trailers under their control after Jayco notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–28474 Filed 1–3–20; 8:45 am]

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Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1468

Agricultural Conservation Easement Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

[Docket ID NRCS–2019–0006]

RIN 0578–AA66

Agricultural Conservation Easement Program

AGENCY: Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), U.S. Department of Agriculture (USDA).

ACTION: Interim rule.

SUMMARY: The Agriculture Improvement Act of 2018 (the 2018 Farm Bill) made changes to ACEP. This interim rule makes conforming changes to the ACEP policies and procedures in the regulations.

DATES:

Effective: December 30, 2019.

Comment date: Submit comments on or before March 6, 2020.

Comment date for Environmental Review: Submit comments on the draft Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) on or before February 5, 2020.

ADDRESSES: We invite you to submit comments on this document. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of this document. You may submit comments by the following method:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID NRCS–2019–0009. Follow the online instructions for submitting comments.

All written comments received will be publicly available on *www.regulations.gov.*

A copy of the draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained from either of the following websites: *www.regulations.gov* or *https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=nrcseprd1504015.* A hard copy may also be requested in one of the following ways:

• *Via mail: karen.fullen@usda.gov* with ''Request for EA'' in the subject line; or

• *A written request:* Karen Fullen, Environmental Compliance Specialist, Natural Resources Conservation Service, 9173 W Barnes Dr., Suite C, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Jeffrey White, 202–720–1882; email: *Jeffrey.White2@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Conservation Easement Program (ACEP) is a voluntary program to help farmers and ranchers preserve their agricultural land and restore, protect, and enhance wetlands on eligible lands. The program has two easement enrollment components:

• Agricultural land easements (ACEP–ALE); and

• Wetland reserve easements (ACEP–WRE).

Under ACEP–ALE, NRCS provides matching funds to State, Tribal, and local governments, and nongovernmental organizations with farm and ranch land protection programs to purchase agricultural land easements. Agricultural land easements are permanent or for the maximum duration authorized by State law. Under ACEP–WRE, NRCS protects wetlands on eligible lands by purchasing an easement directly from eligible landowners or entering into 30-year contracts on acreage owned by Indian Tribes, in each case providing for the restoration, enhancement, and protection of wetlands and associated lands. Wetland reserve easements may be permanent, 30-years, or the maximum duration authorized by State law.

ACEP was originally authorized by the Agricultural Act of 2014 (the 2014 Farm Bill) and NRCS administers ACEP pursuant to regulations at 7 CFR part 1468 issued as a final rule on October 18, 2016.

The 2018 Farm Bill

The 2018 Farm Bill made changes to the ACEP authorizing legislation in the Food Security Act of 1985, including:

• Identifying and protecting agricultural land by limiting nonagricultural uses that negatively affect the land's agricultural uses and conservation values as an ACEP purpose.

• Removing the requirement that NRCS seek input from the Secretary of the Interior at the local level in the determination of eligible land.

• Defining the term ''monitoring report.''

• Removing the requirement that an agricultural land easement be subject to an agricultural land easement plan but retaining the requirement that there be a conservation plan on any portion of the easement area that is highly erodible cropland.

• Identifying for agricultural land easements that the U.S. right of enforcement does not extend to a right of inspection except under certain circumstances.

• Introducing new considerations for certification of eligible entities, including whether the entity is an accredited land trust or is a State department of agriculture.

• Adding improving water quality to the priority considerations for acquiring wetland reserve easements.

• Adding additional criteria and parameters for the authorization of compatible economic uses on wetland reserve easements.

• Adding further specificity to considerations made in developing a wetlands reserve easement plan.

• Authorizing the Secretary to enter into a legal arrangement with an eligible entity that is interested in a ''buy-protect-sell'' transaction for the acquisition of an agricultural land easement.

• Removing the requirement that 50 percent of the non-Federal share for an agricultural land easement be provided by cash resources of the eligible entity and identifying the extent to which the non-Federal share can be comprised by other sources, such as a qualified charitable donation by the landowner.

• Specifying the existing policy of the Secretary to adjust agricultural land easement ranking and evaluation criteria for geographic differences and to give priority to applications that maintain agricultural viability.

• Introducing additional terms and conditions that may be included in the agricultural land easement deed.

• Specifying the existing policy of the Secretary to ensure that the grazing uses on a wetland reserve easement with a reservation of grazing rights comply with a grazing management plan, that is reviewed and modified as needed at least every 5 years.

• Identifying the criteria under which NRCS may authorize the restoration of the wetland reserve easement area to hydrologically appropriate native vegetative communities or alternative naturalized vegetative communities, subject to certain requirements.

• Incorporating changes to NRCS's subordination, modification, exchange, or termination of ACEP easements.

USDA 2018 Farm Bill Listening Session

On February 14, 2019, the Farm Service Agency (FSA), NRCS, and the Risk Management Agency (RMA) published a notice in the **Federal Register** (84 FR 4041–4044) announcing

a listening session for initial public input on the changes to existing programs implemented by the agencies. The listening session was held on February 26, 2019. The Commodity, Credit, and Crop Insurance titles, and parts of the Conservation, Energy, and Miscellaneous titles were covered during the listening session. The agencies also announced an opportunity for the public to make written statements through March 1, 2019. Each agency will take into account stakeholder input when making discretionary decisions on program implementation.

FSA, NRCS, and RMA received 183 written comments from individuals, trade groups, other organizations, and State entities. All written comments are available to the public for review at: *https://www.regulations.gov/document?D=USDA-2019-0001-0001.* In addition to program-specific comments, there were recurring overarching comments about placing a priority on information sharing between agencies for data collection regarding soil health and conservation practices.

NRCS received a number of comments regarding the Agricultural Conservation Easement Program (ACEP), with the majority of those comments pertaining to the ACEP–ALE and a smaller number pertaining to ACEP–WRE. Among the comments submitted, NRCS received 11 comments recommending a more streamlined and efficient easement application and enrollment process across ACEP.

NRCS received 12 comments regarding the elimination of the requirement for an agricultural land easement plan on ACEP agricultural land easements. Most of these 12 comments called for the immediate implementation of this new Farm Bill provision in FY 2019, while others pushed for the prioritization of easements that have strong conservation planning.

NRCS received 10 comments seeking for additional guidance on the buy-protect-sell provisions of the Farm Bill. Most of the comments asked the Agency to ''clearly outline the scenario where one eligible entity owns the land and another eligible entity acquires the conservation easement.'' Other comments urged flexibility in the consideration of extensions to the timing requirements for land transfer under buy-protect-sell transactions, to help beginning and young farmers acquire lands.

NRCS received 10 comments regarding allocation and expenditure of funding across ACEP, of which 5 comments recommended an annual allocation of $30 million for the partnership arrangements under the wetland reserve enhancement partnership (WREP) option in FY 2019. Other comments recommended that funding allocations for ACEP follow historical program demand, providing at least two-thirds of the funding for wetland reserve easements and the rest for agricultural land easements.

On the Farm Bill provisions related to ACEP–ALE cost-share requirements, NRCS received 10 comments recommending that the elimination of minimum cash contribution amount from the eligible entity as a component of the non-federal share of an agricultural land easement not be subject to geographic limits. Other comments highlighted that cash contributions provided by the eligible entity should be prioritized and that closing costs be included under the permissible forms of non-federal share.

NRCS received eight comments that advocate for establishing an efficient process for granting waivers of the Adjusted Gross Income (AGI) limitation as it relates to the funding of conservation easements that will result in the protection of environmentally sensitive land of special significance, with a focus on easements that will help protect migratory birds, conserve wetlands, secure habitat connectivity, improve water quality, or contribute to conservation objectives identified in wildlife, landscape, or watershed plans and initiatives.

NRCS received seven comments recommending increased flexibility in ACEP–ALE deed term requirements and streamlined process for accredited land trusts to become certified entities. There were also seven comments seeking clarification whether agricultural land easements can be up to 100 percent forest land, given the provision on ''nonindustrial private forest land'' under the eligible land definition.

NRCS received six comments recommending that the Agency work with regional, state and local wildlife agencies on ACEP–WRE enrollment and implementation, and on the determination of ''alternative plant communities.'' Other comments underlined the importance of science-based forest and vegetation management in the restoration of new and the maintenance of existing wetland reserve easements.

NRCS received four comments urging the stringent application of the statutory requirements in the approval of subsurface mineral development projects on agricultural land easements and for the use of diverse native plants in remediation and restoration plans.

NRCS received three comments recommending that ''grasslands of special environmental significance'' include native grasslands at risk of conversion and those that provide habitat for threatened and endangered species. Including a recommendation for the prioritization of those on which the benefits of the grassland will be maximized through robust conservation management activities.

NRCS received three comments that recommended setting an annual date for FSA to provide NRCS the 25 percent cropland compliance report and releasing state and county-level data regarding closed ACEP easements to the public. NRCS received three comments recommending increased tracking and reporting of conservation and environmental outcomes related to land protected by conservation easements under ACEP.

NRCS also received requests for additional guidance on the following issues and provisions:

- Co-eligible entity process used in ACEP–ALE;
- Clear program rules on easement modification and termination;
- Clarification on what constitutes ''non-agricultural uses'' on eligible land under ACEP–ALE;
- Clear guidance on the ''reasonable person'' approach to valuation in land appraisals for easements;
- Support for inclusion of water quality improvement in program priorities and in the national ranking criteria; and
- Funding for technical assistance to implement ACEP–ALE.

NRCS evaluated the changes made by the 2018 Farm Bill and the comments received during the listening session and is incorporating changes into the ACEP regulation as discussed below.

Discussion of Key Changes Incorporated Into the ACEP Regulation

Several of the changes require different provisions of the ACEP regulation to be revised. NRCS discusses the key changes first generally depending upon whether the change is ACEP-wide, ACEP–ALE, and ACEP–WRE, and then summarizing any changes to each of the sections has changed.

ACEP-Wide Key Changes

AGI Waiver

Section 1001D of the Food Security Act of 1985 specifies that a person or legal entity is not eligible to receive a payment or benefit under Title XII of the Food Security Act of 1985 if the average annual AGI of the person or legal entity

exceeds $900,000. Section 1704 of the 2018 Farm Bill amended section 1001D to reauthorize a waiver to the application of the AGI limitation to certain conservation program payments, on a case-by-case basis, if environmentally sensitive land of special significance would be protected as a result of such waiver. An AGI waiver provision was authorized under the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) but was removed under the Agricultural Act of 2014 (2014 Farm Bill). This rule incorporates the AGI waiver in § 1468.2.

Easement Administration Actions: Easement Subordination, Modification, Exchange, and Termination

The 2014 Farm Bill provided NRCS with flexibility in the long-term administration of easements by authorizing NRCS to approve an easement subordination, modification, exchange, or termination under specified criteria identified in statute. These actions are referred to collectively as easement administration actions. In particular, as originally authorized, NRCS could approve an easement administration action if NRCS determined that the action:

(1) Was in the Federal Government's interest,

(2) addressed a compelling public need for which there is no practicable alternative or such action furthered the practical administration of the program,

(3) resulted in comparable conservation value and equivalent or greater economic value to the United States, and

(4) other requirements specific to the action type.

NRCS defined each of the easement administration actions in the ACEP regulation to provide a clear distinction between each type of easement administration action and identified the criteria under which these actions are evaluated.

The 2018 Farm Bill modified slightly the criteria under which NRCS may subordinate, modify, exchange, or terminate part or all of an easement. In particular, the 2018 Farm Bill distinguished each of these easement administration actions by providing interrelated but somewhat different criteria for subordination actions, for modification and exchange actions, and for termination actions. The Managers recognized the substantial investment taxpayers make in easements but identified that on limited occasions, there may be justifications for changes to easements. In particular, the Managers identified that terminating an easement should only be done in very rare cases and that the amendments made by the 2018 Farm Bill did not weaken the current requirements for termination actions.

Because the statute now separates the actions and provides slightly different criteria for each, NRCS has modified the regulation to reflect the changes as follows:

- Defined the term easement administration action to ease readability of the regulation where all four terms are referenced;
- Modified slightly the existing definition of easement subordination to reflect the changes made in the statute;
- Maintained the existing definitions for easement modification, easement exchange, easement termination as these conform to the new statutory language;
- Modified the regulation slightly to clarify which criteria are applicable to each of the types of easement administration actions; and
- Reflected the new statutory provisions that certain easement administration actions may not increase any payment to an eligible entity and that for easement terminations, the United States will be fully compensated for the fair market value of the land and any costs or damages related to the easement termination as determined appropriate by NRCS.

ACEP–ALE Key Changes

ACEP–ALE Non-Federal Contribution Requirements

The contributions provided by the eligible entity for the purchase of the agricultural land easement from the landowner are comprised of a Federal share and non-Federal share based on the fair market value of the agricultural land easement. The Federal share is limited to 50 percent of the fair market value of the easement and the non-Federal share must be at least equivalent to the Federal share (except for grasslands of special environmental significance (GSS) where the Federal share may be up to 75 percent). This did not change.

Under the 2014 Farm Bill, the non-Federal share provided by the eligible entity could include a charitable donation or qualified conservation contribution from the agricultural landowner, but the eligible entity was required to contribute its own cash resources in an amount of at least 50 percent of the Federal share provided by NRCS.

The 2018 Farm Bill amended the ACEP–ALE non-Federal share provisions by removing the requirement that the eligible entity contribute its own cash resources in an amount that is at least 50 percent of the Federal share. Additionally, the 2018 Farm Bill specified the permissible sources that could be considered part of the non-Federal share, including cash resources provided by the eligible entity, a charitable donation or qualified conservation contribution from the landowner, costs associated with securing an ACEP–ALE deed, and other costs as determined by NRCS.

The removal of a specified cash contribution amount to be provided by the eligible entity creates the potential for the only actual payment provided to an agricultural landowner for the sale of the easement to be the funds provided by NRCS subject to the limits of the Federal share. To address the potential for reduced contributions from the eligible entity and the resultant reduction in compensation paid to the agricultural landowner for the sale of an easement, NRCS considered whether it should establish by regulation a different or tiered cash contribution requirement for eligible entities seeking ACEP funding. In particular, NRCS considered whether the regulation should maintain some level of required eligible entity cash contribution (for example, 10 to 25 percent) with the flexibility to waive the requirement in areas of historically low ACEP–ALE enrollment, if the landowner was not a historically underserved producer, or for projects of special significance.

However, given the intent of the Managers to broaden the ability of eligible entities to participate in ACEP–ALE across a more diverse geography, NRCS did not incorporate or specify an eligible entity cash contribution level in this interim rule. Instead, NRCS will consider a cash contribution provided by an eligible entity as a National ranking matter.

Additionally, NRCS determined that certain procured costs, such as appraisals, boundary surveys, and closing costs, incurred by the eligible entity to secure the easement deed may be considered as meeting the non-Federal share. NRCS has limited the consideration of ''other nonprocured costs,'' such as stewardship expenses, to circumstances when the other sources of the non-Federal share, including entity cash contribution toward the easement payment and entity costs for procured items, are not sufficient to meet the non-Federal share requirement. NRCS anticipates that in general, the contribution of an eligible entity's cash resources toward the purchase of the easement itself in combination with any qualified landowner donation will satisfy the extent of the non-Federal contribution requirement. NRCS

anticipates that consideration of other costs associated with securing the deed or stewarding the easement will not be needed frequently for the eligible entity to meet the non-Federal contribution requirement. Therefore, to minimize the administrative burden to all parties to the ACEP–ALE enrollment, NRCS will identify the documentation the eligible entity must provide based on the level of reliance on those other costs in the calculation of the non-Federal share.

Also, the cost benefit analysis for this rule assessed whether the lack of a specified eligible entity cash contribution requirement would result in increased cost to ACEP and a commensurate reduction in acreage enrollment in ACEP. This analysis determined that this change will likely result in reduced leveraging of Federal funds by the eligible entity, but may provide better access to ACEP–ALE in areas where non-Federal farm and ranch land preservation funding is not readily available.

ACEP–ALE Plan

As originally authorized under the 2014 Farm Bill, all ACEP–ALE enrollments required that the agricultural land easement be subject to an ACEP–ALE plan. The plan incorporated any required component plans needed to address particular land types or resource issues on the enrolled parcel, such as a grasslands management plan on grassland, a forest management plan for certain forest land, or a conservation plan for highly erodible cropland.

The 2018 Farm Bill removed the requirement that the agricultural land easement be subject to an ACEP–ALE plan but continues to require a conservation plan for any highly erodible cropland. Given that the 2018 Farm Bill identified that NRCS could give priority to an application for the purchase of an agricultural land easement that maintains agricultural viability, and to encourage eligible entities and NRCS to work with landowners to undertake conservation planning on their land in order to maximize the environmental value of the protected land, NRCS considered how best to encourage continued resource management planning on ACEP–ALE lands.

In particular, NRCS considered whether to:

(1) Continue to require a grassland management plan for GSS given the greater Federal investment (that is, 75 percent of fair market value) and the ability of the plan to help ensure the landowner has the best available information to manage these sensitive grasslands;

(2) Authorize NRCS at the State level to consider certain planning activities as an eligibility consideration; or

(3) Not require any planning, other than a conservation plan on highly erodible land, but authorize the inclusion of a ranking factor that recognizes agreement by the eligible entity to develop an agricultural land easement plan.

This rule changes various sections of the regulation to remove the requirement that the easement to be subject to an ACEP–ALE plan, except for the compliance requirements associated with a conservation plan on highly erodible cropland. This rule removes the requirement for the development of an ACEP–ALE plan. However, to encourage continued planning on ACEP–ALE lands where a conservation plan is not required, the regulation specifies that the development and maintenance by the eligible entity of an ACEP–ALE plan, including a grassland or forest management plan, can be a ranking consideration at the State level to prioritize applications from eligible entities committed to ensuring conservation planning activity occurs on lands to be enrolled in ACEP–ALE. The decision to adopt a planning requirement is made by the NRCS State Conservationist, in consultation with the State Technical Committee. If such ranking is adopted at the State level and a parcel enrolled accordingly based on that ranking, the regulation specifies that the easement deed terms must require that the plan be updated to reflect any change in the agricultural operations on the easement area.

Buy-Protect-Sell Transactions

The 2018 Farm Bill defines a new transaction type and authorizes the Secretary to enter into a legal arrangement for buy-protect-sell transactions. Buy-protect-sell transactions are arrangements between NRCS and an eligible entity where the entity owns or will own the land prior to the acquisition of the agricultural land easement on the property, and the eligible entity either:

(1) Sells fee title to the land to a farmer or rancher prior to or at easement closing; or

(2) Holds fee title at the time the agricultural land easement is conveyed on that land, and transfers ownership of the land subject to the easement to a farmer or rancher not later than 3 years after the date of acquisition of the agricultural land easement.

Buy-protect-sell transactions are limited to private and Tribal agricultural lands. State or local governments are not eligible for buy-protect-sell transactions on land they own.

Buy-protect-sell transactions differ from standard transactions that occur under ACEP–ALE. The standard ACEP–ALE transactions involve land that is currently owned by a farmer or rancher and subject to a pending offer by an eligible entity to purchase an agricultural land easement, but the eligible entity does not and would not ever own the property itself.

In contrast, all buy-protect-sell transactions require the eligible entity hold fee title to the land and to transfer such title subject to the agricultural land easement to a farmer or rancher at not more than agricultural value plus reasonable holding and transaction costs within the timeframes specified for the buy-protect-sell transaction type. Failure to meet these conditions, as determined by NRCS, requires the eligible entity to reimburse NRCS for the entirety of the Federal share provided. NRCS evaluated alternatives for determining compliance with buy-protect-sell conditions, including:

(1) Verification that the purchaser was a farmer or rancher through filing of an Internal Revenue Service (IRS) Schedule F (Form 1040), ''Profit or Loss From Farming,'' or alternatively an independent certification by the eligible entity;

(2) verification that the sale of the land occurred at not more than agricultural value based on an independent appraisal provided by the eligible entity, or alternatively other documentation and certification of agricultural value provided by the eligible entity;

(3) ensuring that the purchaser was charged only reasonable holding and transaction costs by identifying the items that could be considered and establishing an upper limit as a percentage of the agricultural value, or alternatively defining reasonable holding and transaction costs but not setting a fixed upper limit.

NRCS also evaluated alternatives to minimize risk of transaction failure and cost recovery, including:

(1) For land that the eligible entity does not own but is in the process of purchasing at the time the buy-protect-sell agreement is entered into, there is an additional risk to these transactions should the entity fail to complete the initial purchase of the land, therefore, NRCS considered limiting the time frame for this initial purchase to within 12 months of the execution of the buy-protect-sell agreement, or alternatively

requiring the initial purchase to be completed any time prior to closing on the agricultural land easement;

(2) to minimize the risk of cost recovery for the first type of buy-protect-sell transactions described above by issuing the ACEP–ALE cost-share payment only on a reimbursable basis after the agricultural land easement has closed, or alternatively issuing the ACEP–ALE cost-share as either an advance payment 30-days prior to easement closing or as a reimbursable payment.

To make the process as objective and streamlined as possible, NRCS has identified that evidence that the purchaser is a farmer or rancher should be based on the filing of an IRS Schedule F, that the agricultural value of the land must be determined by an appraisal, and that the holding and transaction costs that may be charged to the landowner are limited to 10 percent of the agricultural value of the easement. NRCS will take into consideration in its determination that beginning farmers and ranchers in their first year of farming and limited resource farmers and ranchers may not file an IRS Schedule F, and may require the eligible entity to provide alternative documentation in those situations.

To minimize the risk that ACEP–ALE funds will be obligated to an unviable transaction for the full length of a buy-protect-sell agreement at the expense of viable ACEP projects, the interim rule requires that the eligible entity's initial purchase of the land be completed within 12 months of the execution of the buy-protect-sell agreement as identified by NRCS in the terms of the ALE-agreement. To minimize the risk that the eligible entity will have to repay NRCS for the Federal share, the interim rule identifies that an ACEP–ALE cost-share payment will only be provided on a reimbursable basis for the first type of buy-protect-sell transactions.

Under the 2014 Farm Bill, NRCS had conducted ACEP–ALE transactions similar to the first type of buy-protect-sell transactions where the eligible entity owns fee title to a parcel of land and transfers that fee title to a farmer or rancher prior to or at the time of the creation of the agricultural land easement. However, there are potential legal impediments to the second type of buy-protect-sell transactions where the eligible entity holds fee title at the time the agricultural land easement is created but does not transfer ownership of the land subject to the easement for up 3 years after the creation of the agricultural land easement. Typically there are provisions in easement law that restrict a person or legal entity from granting themselves an easement on land they own. Further, under easement law, conservation easements are created either by reservation at the time of transfer of the land or through a grant of an easement to a third party.

As part of the regulation development, NRCS worked with the USDA Office of the General Counsel to identify how arrangements might be structured to implement the second type of buy-protect-sell transaction. NRCS considered five potential scenarios, including several options under which the eligible entity worked with a third-party to address the basic principle that an eligible entity that owns fee title to land typically cannot create an easement against itself (referred to in these examples as the ''easement principle''). The five scenarios considered were:

1. A third-party (Straw Landowner) holds the fee title until fee title of the land subject to the easement is sold to a qualified farmer or rancher at agricultural value, and the eligible entity holds the agricultural land easement at time of easement closing. This scenario addresses the easement principle as well as the requirement that the transaction to the Straw Landowner does not violate the mandate that the initial sale of the land subject to the agricultural land easement is to a farmer or rancher.

2. Two eligible entities apply for ACEP, jointly holding the fee title to the parcel. Only one eligible entity becomes the holder of the agricultural land easement. Both eligible entities then sell the fee title of the land subject to the easement to a qualified farmer or rancher at agricultural value. This scenario was determined not likely to be legally viable due to the complexities under various State laws regarding unity of title and disparate treatment about how such title issues are addressed.

3. A third-party (Straw Easement Holder) holds the agricultural land easement from the time of easement closing, and the eligible entity holds the fee title until a qualified farmer or rancher is found to purchase, at agricultural value, the fee title of the land subject to the easement, at which time the agricultural land easement is transferred to the eligible entity. While this scenario addresses the easement principle, NRCS would only be able to make payment after the agricultural land easement is transferred to the eligible entity.

4. As recommended by a comment submitted to the USDA Listening Session held February 26, 2019, the parties to the ALE-agreement would develop strong anti-merger and cost-recovery language to allow the eligible entity to grant the agricultural land easement to itself while still holding fee title to the property and then reaffirm the agricultural land easement at the time the fee title to the land subject to the easement is sold to a qualified farmer or rancher at agricultural value. This scenario does not address the easement principle as it still purports that the eligible entity can hold both an easement and fee title simultaneously, therefore NRCS determined that this scenario was likely not legally viable.

5. NRCS determines the viability of the transaction submitted by an eligible entity. An eligible entity submits to NRCS, as part of its application, the proposed structure of the individual buy-protect-sell arrangement for the sale of the fee title of the land subject to the agricultural land easement to a qualified farmer or rancher at agricultural value in a manner that would address the basic easement principle and applicable program requirements. For approved applications, the individual buy-protect-sell transaction agreement includes such terms and conditions as necessary to satisfy the legal and statutory requirements identified by NRCS.

NRCS has incorporated scenario 5 into the regulation as more fully discussed below in the section-by-section description of changes.

Certification of Eligible Entities

When ACEP–ALE was first authorized, NRCS established a process under which eligible entities that meet established criteria could be certified and entered into longer-term agreements for ACEP–ALE cost-share assistance. Certified eligible entities are able to avail themselves of administrative flexibilities under ACEP–ALE based upon their status as a certified eligible entity as compared to a non-certified eligible entity. For example, NRCS relies on the certified entity to independently complete the easement acquisition in accordance with the terms and conditions of the ACEP–ALE agreement and consistent with the requirements of this part. Additionally, NRCS conducts annual quality assurance reviews on a subset of the transactions after closing and payment rather than prior to closing.

To be certified, an eligible entity must demonstrate to NRCS that the eligible entity could maintain, at a minimum, for the duration of the agreement, a plan for administering easements that is consistent with the purposes of ACEP–ALE; the capacity and resources to monitor and enforce the agricultural land easements; and policies and procedures to ensure the long-term

integrity of the easements. NRCS established in regulation a set of objective, measurable criteria that were used to evaluate the eligible entity's ability to meet the statutory certification criteria, including that the eligible entity provide proof that they held and had stewardship responsibility for a minimum of 25 agricultural land conservation easements, unless that number was reduced by NRCS through a waiver, and proof that at least 5 of the these easements were ACEP–ALEs or predecessor program [1] easements.

The 2018 Farm Bill added two new methods by which an eligible entity may become certified. NRCS can grant certification status to an eligible entity that is either:

(1) An eligible entity that is accredited by the Land Trust Accreditation Commission or by an equivalent accrediting body as determined by NRCS; or

(2) A State department of agriculture or other State agency with authority for farm and ranchland protection, and the associated requirements for such entities.

Under these two new methods of certification, the eligible entity must demonstrate that it acquired not fewer than 10 agricultural land easements under ACEP–ALE, FRPP, or FPP and has successfully met the responsibilities of the eligible entity under the applicable agreements with NRCS relating to agricultural land easements.

NRCS revised the regulation to add these two new methods for an eligible entity to be considered for certification. Additionally, to ensure that an eligible entity that is certified under the original criteria meets the same ACEP–ALE experience requirements as is required under the two new methods, NRCS has increased from 5 to 10 the number of ACEP–ALE agricultural land easements or predecessor program easements that an eligible entity must have successfully closed to qualify for certification. The minimum requirement has not changed; the eligible entity must hold and have stewardship responsibility for at least 25 agricultural land conservation easements.

Optional Permitted Uses

Section 2603 of the 2018 Farm Bill amended section 1265B of the Food Security Act of 1985 (16 U.S.C. 3865b) to identify optional permitted uses that an eligible entity may include in the terms and conditions for an easement deed funded under ACEP–ALE. Among the optional uses, ACEP now includes criteria by which subsurface mineral development on land subject to the agricultural land easement may be authorized. These criteria mirror many of the criteria which NRCS identified in policy and used when evaluating an eligible entity's proposed terms and conditions concerning subsurface mineral development. The 2018 Farm Bill amendments make some of the criteria and requirements more specific, and in some instances more restrictive, than the criteria and language used in previous ACEP–ALE funded easements deeds. For example, the 2018 Farm Bill specifies that the subsurface mineral development plan must include a plan for the remediation of impacts to the agricultural use or conservation values and must be approved by NRCS prior to the initiation of the mineral development activity. This rule revises the regulation and NRCS has revised its associated policy.

ACEP–WRE Key Changes

ACEP–WRE Compatible Use Authorizations

Under ACEP–WRE, a landowner conveys a wetland reserve easement to the United States through a reserved interest deed. Among the rights conveyed, the United States acquires the rights to permit, in its sole discretion and under specified conditions, compatible uses of the easement area, including hunting and fishing, managed timber harvest, or periodic haying or grazing. The 2018 Farm Bill requires several considerations that have been part of the NRCS compatible use authorization process.

In particular, the 2018 Farm Bill added ''water management'' to the list of activities that may be considered a compatible economic use on a wetland reserve easement. The 2018 Farm Bill specified that NRCS will request and consider the advice of the applicable State technical committee about the types of compatible uses that may be authorized and the conditions under which they may be conducted on land subject to a wetland reserve easement. The 2018 Farm Bill provided that in evaluating and authorizing compatible economic uses that NRCS will consider the ability of the compatible use to facilitate the practical administration and management of the WRE and ensure that the authorized use furthers the functions and values for which the easement was established.

NRCS added water management to the list of specific examples of compatible uses identified in the ACEP regulation, incorporated into the responsibilities of the applicable State technical committees input as it relates to compatible use types and conditions, and incorporated the compatible use evaluation and authorization considerations identified in the 2018 Farm Bill.

ACEP–WRE Reservation of Grazing Rights

Under ACEP–WRE, a landowner may reserve grazing rights under a wetland reserve easement or 30-year contract if the reservation and use of the grazing rights is:

- Compatible with the land subject to the easement,
- Consistent with the historical natural uses of the land and long-term wetland protection and enhancement goals for which the easement or 30-year contract was established, and
- In compliance with the WRE plan developed for the easement.

The 2018 Farm Bill adds language to the ACEP–WRE reservation of grazing rights enrollment option. There is now a statutory requirement that the reservation and use of grazing rights comply with a grazing management plan that is consistent with the wetland reserve easement plan and that such grazing management plan has been reviewed, and modified as necessary, at least every 5 years.

NRCS recognizes that grazing can be an appropriate vegetation management and disturbance activity tool to restore and maintain the functions and values of certain wetland ecosystems. On any ACEP–WRE enrollment, NRCS may authorize grazing on the easement area through a temporary compatible use authorization to facilitate specific wetland restoration or management objectives on the easement area.

Under the ACEP–WRE reservation of grazing rights enrollment option, NRCS identifies, as part of the wetland reserve easement deed, the specific wetland ecosystem and the associated level of grazing that is appropriate to ensure the wetland functions and values are achieved. This level of grazing comprises the extent of the grazing rights reserved to the landowner. As a result, the easement compensation for ACEP–WRE reservation of grazing rights enrollments is less than a standard ACEP–WRE enrollment because the landowner is retaining a right that normally would be conveyed under a standard ACEP–WRE easement deed.

[1] The Farmland Protection Program (FPP), as authorized by the Federal Agricultural Improvement and Reform Act of 1996 (the 1996 Farm Bill) and the Farm and Ranch Lands Protection Program (FRPP) as authorized by the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) and the 2008 Farm Bill are the predecessor programs to ACEP–ALE.

ACEP–WRE Wetland Restoration

In the rulemaking for ACEP–WRE under the 2014 Farm Bill, NRCS adopted in the ACEP regulation substantially the same definition of wetland restoration that had long existed in the WRP regulation; namely, the term wetland restoration under the ACEP regulation has been defined as follows:

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:

(1) The original vegetation community and hydrology are, to the extent practical, re-established; or

(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the easement area.

This definition of wetland restoration is unique to ACEP–WRE and is used as a broad and inclusive term intended to guide decision-making related to the treatment of the entire easement area, including wetland and any associated habitats, and for the duration of the enrollment, from initial land eligibility and ranking determinations, through preliminary and final restoration planning, design, and implementation, and on through the long-term management of the easement area. The 2018 Farm Bill adds new language under which NRCS, in coordination with State technical committees and following State-specific criteria and guidelines, may authorize the establishment or restoration of a hydrologically appropriate native community or alternative naturalized vegetative community as part of a wetland reserve easement plan on land subject to a wetland reserve easement under certain conditions. This rule revises the definition of wetland restoration for consistency with the new requirements in the 2018 Farm Bill. The definition of wetland restoration has been revised to include the requirement for wetland restoration to be conducted following published State-specific criteria and guidelines developed in consultation with the State technical committee. Additionally, NRCS has eliminated the existing regulatory limitation that an alternative community different from what existed historically on the site be no more that 30 percent of the easement area and has added the conditions under which such a community may be restored on the easement area consistent with the provisions identified in the 2018 Farm Bill.

ACEP Regulation Organization

The ACEP regulation in 7 CFR part 1468 is organized into three subparts. Subpart A contains provisions applicable across ACEP, subpart B contains provisions specific to the implementation of ACEP–ALE, and subpart C contains provisions specific to the implementation of ACEP–WRE. The following section summarizes each section of the regulation and describe the changes made to conform to the 2018 Farm Bill. Other editorial adjustments to improve readability. Although some provisions remain unchanged, this rule revises the ACEP regulation in its entirety.

Summary of Changes in Subpart A, General Provisions

§ 1468.1 Applicability

This section sets forth the requirements, policies, and procedures for ACEP; identifies that ACEP is available in all 50 States, District of Columbia, and certain territories; describes how the remainder of the regulation is organized; and addresses stewardship responsibilities associated with existing easements. NRCS incorporated the revision to the program purposes to limit nonagricultural uses that negatively affect the agricultural uses and conservation values.

§ 1468.2 Administration

This section identifies that ACEP is administered under the general supervision and direction of the NRCS Chief. The Commodity Credit Corporation (CCC) made changes to its Board of Directors and the Chief is no longer a Vice President of the CCC. A new paragraph (d) was moved to this section, relocating a provision originally in § 1468.21 that is applicable across ACEP. Paragraph (d) specifies that applications may be submitted on a continuous basis or in response to specific ACEP solicitations.

The 2018 Farm Bill requires easement monitoring, therefore paragraph (h) has been added to specify generally monitoring responsibilities for ACEP–ALE and ACEP–WRE. Paragraph (f) has been revised to add monitoring of wetland reserve easements to the responsibilities that NRCS may delegate to an appropriately qualified conservation organization.

Additionally, the 2018 Farm Bill amended the Regional Conservation Partnership Program (RCPP) so that RCPP funds are administered through RCPP contracts and not contracts and agreements of the covered programs, including ACEP. Therefore, the references to RCPP and related text have been removed from the ACEP regulation.

Other existing paragraphs in this section were reorganized slightly for readability purposes.

§ 1468.3 Definitions

The following definitions have been added in § 1468.3 to be consistent with the 2018 Farm Bill as follows:

The definition of ''buy-protect-sell transaction'' is included to establish this new transaction type under ACEP–ALE. An eligible entity and NRCS may enter into a legal arrangement to secure an agricultural land easement on land that will be transferred to a qualified farmer or rancher under specified conditions.

The definition of ''Easement administration action'' is included to ease readability of the regulation where all four terms, easement subordination, easement modification, easement exchange, and easement termination are referenced.

The definition of ''Grazing management plan'' is included to identify the document used to describe an NRCS-approved grazing management system on an ACEP–WRE.

The definition of ''Monitoring report'' is included to describe the obligation of the easement holder to document and convey the findings of the annual review of ACEP easements.

The definition of ''Nonindustrial private forest land'' is included to reflect terminology used to describe the vegetative cover and ownership requirements of such land. With the inclusion of the definition of ''Nonindustrial private forest land,'' the definition of ''Forest land'' was removed to avoid confusion or redundancy.

Changes to the definition of ''Wetland restoration'' are discussed above in the section on that topic.

Minor editorial changes were made to other definitions to improve their readability. This rule also removed the definitions for ''Active agricultural production,'' ''Forest land of statewide importance,'' and ''Projects of special significance'' since such terms were only necessary to identify whether a transaction qualified for a waiver as a project of special significance, and the 2018 Farm Bill removed the need for such a waiver.

§ 1468.4 Appeals

Section 1468.4 specifies the nature of the appeal rights for persons, legal entities, or eligible entities that apply for, receive payment under, or receive determinations for ACEP. The 2018

Farm Bill did not make any changes that affects this section. Minor edits have been made to include notice to easement holders.

§ 1468.5 Scheme or Device

Section 1468.5 is similar to other conservation program provisions and describes the authority that NRCS exercises to protect the Federal investment in conservation easements from fraudulent activities. No changes were made to this section.

§ 1468.6 Subordination, Exchange, Modification, and Termination

Section 1468.6 specifies the easement administration actions that may be authorized by section 1265D(c) of the Food Security Act of 1985.

The 2018 Farm Bill made several changes that modified the framework under which requests for easement administration actions may be reviewed and approved. In particular, the 2018 Farm Bill, while maintaining consistent standards for review, provides flexibility for the review of requests for subordination, and added conditions to limit the approval of terminations.

The changes to this section included reorganizing the provisions to specify the criteria that apply to each of the particular types of easement administrative actions. Where particular criteria apply to several types of easement administrative action, the rule identifies the easement administrative actions types that must meet that criteria in order to be considered for approval. Proposed easement administration actions must meet all applicable criteria for the action to be considered for approval. The section is organized in a step-wise fashion so if the proposal fails to meet one of the criterion, it is not necessary for NRCS to consider the remaining criteria.

§ 1468.7 Transfer of Land

Section 1468.7 specifies how NRCS will address enrollment of land where the landowner transfers the rights in land after an agreement has been executed, but prior to the purchase of the easement. No changes were made to this section.

§ 1468.8 Payments Not Subject to Claims

Section 1468.8 specifies that NRCS will make payment to ACEP participants without regard to any claims that non-Federal creditors may have on the financial assets of the program participant as authorized by 7 CFR part 1403. The 2018 Farm Bill did not make any changes to ACEP that affect this section. A minor edit was made to remove the word ''government.''

§ 1468.9 Assignments

Section 1468.9 specifies that a program participant can assign their right to payment to another person or legal entity. No changes were made to this section.

§ 1468.10 Environmental Markets

Section 1468.10 provides that a landowner subject to an ACEP easement may also enter into an environmental credit agreement with third parties provided that the terms of the environment credit agreement do not interfere with the rights acquired by the United States or the eligible entity and do not cause the landowner to violate the terms of the agricultural land easement or wetland reserve easement. Revisions to § 1468.10 clarify that the purposes of the environmental services market must include the facilitation of additional conservation benefits consistent with the conservation purposes for which the easement was acquired.

Summary of Changes in Subpart B, Agricultural Land Easements

§ 1468.20 Program Requirements

Section 1468.20 includes the program requirements for eligible entities who wish to receive cost-share assistance from NRCS for the purchase of an agricultural land easement. The 2018 Farm Bill made several changes that affect this section.

Paragraph (a) provides that NRCS will facilitate and provide funding for the purchase of easements or other interests in eligible private or Tribal agricultural land for protecting the agricultural use and related conservation values of the land by limiting nonagricultural uses of the land. Also, it maintains the existing requirement that such land be subject to a written pending offer from an eligible entity for standard ALE transactions and adds the option for such lands to be owned by the eligible entity as part of an approved buy-protect-sell transaction.

Paragraph (b) specifies the requirements for establishing the eligibility of an entity applying for ACEP–ALE cost-share assistance. This rule removes the requirement that an eligible entity provide evidence at the time of application that they have funds available to meet the minimum cash contribution requirement. Instead, for transactions where the eligible entity's cash contribution will be less than 10 percent of the easement's fair market value, NRCS requires the eligible entity to provide the estimated costs and anticipated sources of funding for each parcel and evidence of funds available for stewardship of the easement.

Paragraph (c) requires that a landowner who is selling an agricultural land easement to an eligible entity meets the conservation compliance requirements in 7 CFR part 12 and the AGI limitation provisions at 7 CFR part 1400. Under a buy-protect-sell transaction, the eligible entity is the landowner. For transactions where the eligible entity sells the fee title to a qualified farmer or rancher prior to or at the time of the easement closing, then the farmer or rancher purchaser must meet these landowner payment eligibility requirements. If, however, the fee title to the land will not be transferred to a farmer or rancher until after the agricultural land easement is closed, then the eligible entity is responsible for meeting the landowner payment eligibility requirements prior to easement closing. The regulation continues to clarify that it is the eligible entity and landowner's responsibility to ensure that the necessary records have been established in the USDA customer records system.

Paragraph (d) specifies the criteria by which land can be determined eligible and specifies that the land must be cropland, rangeland, grassland, or land that contains forbs or shrubland for which grazing is the predominant use, located in an area historically dominated by grassland, forbs, or shrubs, and could provide habitat for animal or plant populations of significant ecological value, pastureland, or nonindustrial private forest land that meet specific criteria. Consistent with the prior easement regulation and policy that sought to minimize overlap and conflict with other USDA forest easement programs, paragraph (d) requires that land enrolled in ACEP–ALE cannot include forest land greater than two-thirds of the ACEP–ALE easement area but eliminates the requirement that land with a certain amount of forest land have a forest management plan. Lands with greater than two-thirds non industrial private forests may be protected under a larger conservation easement of which the ACEP–ALE easement area may be a subcomponent, provided the forest land within the ACEP–ALE easement area does not exceed two-thirds of the described ACEP–ALE easement area.

Paragraph (e) specifies which lands are ineligible for enrollment, including lands that are owned by a governmental entity, unless in trust for an Indian Tribe. Also, it identifies that land

owned by nongovernmental organizations whose purpose is to protect agricultural use and related conservation values are ineligible since such lands are already protected from conversion to agricultural use. To address buy-protect-sell transactions, paragraph (e)(3) has been revised to specify that eligible lands owned by the eligible entity on a transitional basis to secure an ALE on the land and to transfer fee title ownership to a farmer or rancher may be eligible for enrollment provided all other eligibility requirements are met.

The 2018 Farm Bill replaced the term ''proposed'' with ''permitted'' in the language about the types of rights-of-way, infrastructure development, or other adjacent land uses whose impacts may cause land to be considered ineligible. NRCS made a conforming change.

This rule adds paragraph (f) to specify additional eligibility requirements related to buy-protect-sell transactions. In addition to meeting the other eligibility requirements, to be eligible for enrollment under the complex and lengthy real estate transactions, the land must be subject to conditions that necessitate the transitional ownership by an eligible entity from fee title owner to only easement holder. The conditions may include an imminent threat of development as a result of which the existing landowner is unwilling to accept an offer for the purchase of an agricultural land easement from the eligible entity but is willing to sell the land to the eligible entity and the eligible entity intends to place an agricultural land easement on the property and ensure it is sold to a qualified farmer or rancher subject to the conditions of a buy-protect-sell transaction. When applying, the eligible entity must provide evidence of active purchase of the parcel, such as a valid purchase agreement, on land not owned by the eligible entity at the time of application.

§ 1468.21 Application Procedures

Section 1468.21 specifies the application procedures that an entity must follow to have their application be considered for funding under ACEP–ALE. NRCS determines whether an applicant is eligible to participate in ACEP–ALE based on the criteria in § 1468.20. Paragraph (a) was revised to identify that additional application information may be required for buy-protect-sell transactions. Also, it was revised to simplify the regulation and remove matters of policy and administration.

§ 1468.22 Establishing Priorities, Ranking Considerations, and Application Selection

Section 1468.22 specifies how parcels will be ranked for funding. The NRCS ranking system in each State incorporates national and State-specific criteria to rank, score, and prioritize each eligible parcel within the State. The 2018 Farm Bill allows NRCS to adjust the ALE ranking criteria to account for geographic differences if the adjustments meet ACEP purposes and continue to maximize the benefit of the Federal ACEP investment. The section provides flexibility to ensure that such adjustments to address geographic differences are available. In particular, the ranking system, incorporating both national and State criteria, enables NRCS to prioritize parcels that merit ACEP–ALE enrollment. The 2018 Farm Bill also changed certain requirements related to the eligible entity's contribution of cash to the non-Federal share for the purchase of the easement and the requirements for an ACEP–ALE plan. This rule revises the extent of the eligible entity's cash contribution is a National ranking criterion. Additionally, as revised, the regulation specifies that measures that will be used to maintain or increase agricultural viability, such as ACEP–ALE plans, may be a State ranking criterion. The benefits of these actions are now specified as attributes that may be considered as a matter of ranking in the prioritization of projects for selection for funding. Paragraph (g) was modified to simplify the regulation and remove matters of policy and administration.

§ 1468.23 ALE Agreements

Section 1468.23 addresses the principal ACEP documents under which NRCS and an eligible entity identify how they will coordinate the activities needed for the eligible entity to purchase an agricultural land easement with ACEP cost-share assistance, including the respective rights, requirements, and responsibilities related to ACEP implementation under subpart B of the regulation. NRCS, on behalf of the CCC, enters into ALE-agreements with eligible entities with parcels selected for funding. The section was revised for consistency with provisions of the 2018 Farm Bill for ALE-agreements.

§ 1468.24 Compensation and Funding for Agricultural Land Easements

Section 1468.24 addresses the extent to which NRCS will provide financial assistance to an eligible entity for the purchase of an agricultural land easement by the eligible entity. NRCS may provide a Federal share up to 50 percent of the approved fair market value of the agricultural land easement, and the eligible entity must provide a non-Federal share that is at least equivalent to that provided by NRCS.

While ACEP formerly required that an eligible entity contribute its own cash resources in an amount that was at least 50 percent of the amount contributed by NRCS, the 2018 Farm Bill removed the specific 50 percent eligible entity cash contribution requirement, and instead identifies permissible sources of the non-Federal share provided by the eligible entity. These sources include the eligible entity's own cash resources, a landowner charitable donation or qualified conservation contribution, certain easement acquisition costs incurred by the eligible entity, and other costs as determined by NRCS.

Paragraph (b) has been revised to remove the requirement for the eligible entity to contribute its own cash resources in an amount equal to 50 percent of the amount of the Federal share. Paragraph (b) also specifies the costs incurred by the eligible entity associated with securing a deed to the easement that may be included in the calculation of the non-Federal share and the source and limit of other costs that may be included in the calculation of the non-Federal share.

The 2018 Farm Bill removed the reference to the availability of waivers for grassland of special environmental significance since the specific eligible entity cash contribution requirement was removed. NRCS may now provide up to 75 percent of the fair market value of the agricultural land easement, and the eligible entity must provide the remainder as the non-Federal share through any of the specified sources. The ACEP regulation has been modified accordingly, to update the provisions related to grasslands of special environmental significance and to delete paragraph (b)(4) regarding projects of special significance.

NRCS may only provide ACEP–ALE cost-share funds in the form of financial assistance toward the cost of the agricultural land easement itself. The 2018 Farm Bill limited the technical assistance that may be provided by NRCS through ACEP–ALE funding related to planning on the agricultural land easement to the development of a conservation plan on highly erodible cropland. The section of the ACEP regulation has been revised accordingly.

§ 1468.25 Agricultural Land Easement Deeds

Section 1468.25 addresses the minimum deed requirements for an easement transaction to receive ACEP–ALE assistance. In particular, the section specifies that in order for NRCS to provide cost-share assistance to an eligible entity, NRCS will ensure that the eligible entity will include in its easement deeds the terms and conditions necessary to ensure ACEP purposes and requirements are met. The 2018 Farm Bill changes the required and new permitted terms and conditions of agricultural land easement deeds used to specify the regulatory deed requirements.

Paragraph (d)(1) has been revised to incorporate the added specificity to the right of enforcement conveyed to NRCS under the terms of an agricultural land easement.

The requirement that the agricultural land easement be subject to an ACEP–ALE plan was removed.

Paragraph (d)(7) was added to specify the terms and conditions required by statute that must be addressed if the eligible entity chooses to allow subsurface mineral development on the land subject to the agricultural land easement. In particular, the 2018 Farm Bill specified criteria to ensure prohibitions on subsurface mineral development did not eliminate otherwise high value conservation lands from program eligibility. As identified in the Managers Report, the terms and conditions do not negate or supersede any other applicable laws, including State laws, which may otherwise apply to any mineral development activities but ensure the activity should be consistent with the conservation and agricultural purposes of the land and all provisions of the program,

The requirement for a conservation plan on highly erodible cropland was revised and moved to new paragraph (d)(9).

Paragraph (d)(10) was added to specify that appropriate terms and conditions must be included in the easement deed to address items agreed to by the eligible entity as a matter of ranking and basis for selection for funding, such as an eligible entity agreement to develop and maintain an ACEP–ALE plan or provide a cash contribution toward the purchase of the easement.

Paragraph (d)(11) was added to provide that an eligible entity may include terms and conditions in the ALE deed that are intended to keep the land subject to the easement under farmer or rancher ownership.

§ 1468.26 Agricultural Land Easement Plans

As discussed above, agricultural land easements enrolled under the 2018 Farm Bill are not required to be subject an ACEP–ALE plan. The stand-alone section regarding ACEP–ALE plans has been deleted. Applicable provisions related to the development of required conservation plans or the development of ACEP–ALE plans as agreed-to by the eligible entity are captured in other sections of the regulation.

§ 1468.26 Eligible Entity Certification

Under ACEP, NRCS is required to establish a process under which eligible entities that meet established criteria may be certified and entered into long-term agreements for ACEP–ALE cost-share assistance. This interim rule redesignates § 1468.27 as § 1468.26, and is revised as discussed in this section. As redesignated, § 1468.26, Eligible Entity Certification, provides that, at an eligible entity's request, the Chief will determine whether an eligible entity meets certifications requirements and if so, certify the entity. The 2018 Farm Bill expanded the way an eligible entity could demonstrate that they meet certification criteria. In particular, the 2018 Farm Bill provided that NRCS may certify an eligible entity that is either accredited by the Land Trust Accreditation Commission (or equivalent accrediting body) or is a State department of agriculture or other State agency with statutory authority for farm and ranch land protection, and that either of these types of entities has acquired at least 10 agricultural land easements under ACEP–ALE, or predecessor NRCS easement programs, and has successfully met, as determined by NRCS, its responsibilities under ALE-agreements. NRCS has incorporated the additional certification criteria and revised the criteria to require a minimum of 10 agricultural land easements under ACEP–ALE, or predecessor NRCS easement programs (FPP and FRPP), to be held by any eligible entity requesting certification, not just those that meet the new criteria introduced in the 2018 Farm Bill. Other paragraphs in the section were revised to simplify the existing regulation and remove matters of policy and administration.

§ 1468.27 Buy-Protect-Sell Transactions

As discussed above, the 2018 Farm Bill added a new transaction type under ACEP–ALE for buy-protect-sell transactions. Section 1468.27 has been added to describe the form that buy-protect-sell transactions may take and to specify the requirements based on the specific buy-protect-sell transaction type. Buy-protect-sell transactions introduce an option under which NRCS may provide ACEP–ALE cost-share assistance for the purchase of an agricultural land easement on private or Tribal agricultural land owned on a transitional basis by an eligible entity when the ownership of that land will be timely transferred to a qualified farmer or rancher. Section 1468.27 specifies that there are two types of buy-protect-sell transactions, pre-closing and post-closing transfers, which are differentiated based on the timing of the sale of the fee title interest in the land to a qualified farmer or rancher relative to the timing of securing the agricultural land easement. The regulation specifies the requirements and ALE-agreement terms that are applicable to both buy-protect-sell transaction types, and those that are applicable to the individual transaction types. For post-closing buy-protect-sell transactions, additional information will be required at the time of application and NRCS must determine whether the structure of the transaction as proposed by the eligible entity conforms with legal requirements prior to entering into an ALE-agreement for such transactions on a parcel determined to meet the requirements of part 1468.

§ 1468.28 Violations and Remedies

Section 1468.28 specifies the eligible entity's responsibilities to enforce the agricultural land easement's terms and conditions. Additionally, § 1468.28 specifies the circumstances under which NRCS may exercise its right of enforcement under ACEP–ALE, including its right of inspection.

The 2018 Farm Bill identified more specific conditions upon when NRCS could exercise the right of inspection on ACEP–ALE easements, requiring that the right of inspection could only be exercised if the holder of the easement fails to provide monitoring reports in a timely manner or NRCS has a reasonable and articulable belief that the terms and conditions of the easement have been violated. Prior to the inspection, NRCS will notify the eligible entity and the landowner of the inspection and provide a reasonable opportunity for the eligible entity and the landowner to participate in the inspection. These requirements have been incorporated into this section of the ACEP regulations and in the terms and conditions of the ALE-agreements. NRCS will continue to work with the eligible entity, including any easement holders subsequent to the eligible entity,

to assist it in its responsibility to enforce the easement terms.

Summary of Changes in Subpart C, Wetland Reserve Easements

§ 1468.30 Program Requirements

Section 1468.30 specifies the basic requirements for participation in ACEP through a wetland reserve easement, including landowner and land eligibility requirements. The 2018 Farm Bill increased the acres of total cropland in a county that may be subject to an ACEP–WRE easement to 15 percent. Paragraph (b)(1) has been revised accordingly. The 2018 Farm Bill removed the requirement for NRCS to seek input from the Secretary of the Interior at the local level in the determination of eligible land. Paragraph (e)(3) has been revised accordingly. The 2018 Farm Bill also made a slight adjustment to NRCS's consideration of the effects of onsite or offsite conditions that may interfere with the ability of the wetland functions and values to be successfully and cost-effectively restored by changing the status of certain rights-of-way, infrastructure development, or other adjacent land uses whose impacts must be considered from ''proposed'' to ''permitted''. Paragraph (g)(6) has been revised accordingly.

§ 1468.31 Application Procedures

Section 1468.31 specifies the application procedures for a landowner who wants to participate in ACEP–WRE. The 2018 Farm Bill did not make any changes to program implementation that affects this portion of the ACEP regulation.

§ 1468.32 Establishing Priorities, Ranking Consideration and Project Selection

Section 1468.32 specifies the criteria NRCS will use to prioritize, rank, and select properties for enrollment in ACEP–WRE. Among the prioritization and ranking criteria, NRCS may consider the conservation benefits of obtaining an easement, the cost-effectiveness of each easement, whether Federal funds are being leveraged, and the extent to which ACEP–WRE purposes would be achieved on the land.

The 2018 Farm Bill included water quality as an additional priority along with the priority placed on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife. While the ACEP regulation included benefits to water quality as a component of various existing ranking criteria, the capacity of the wetland to improve water quality has been added in the regulation.

§ 1468.33 Enrollment Process

Section 1468.33 specifies the process that NRCS uses for handling applications once they have been selected for enrollment. Minor edits to improve accuracy and readability have been made in the section.

§ 1468.34 Compensation and Funding for Wetland Reserve Easements and 30-Year Contracts

Section 1468.34 specifies how NRCS will determine the level of compensation that a landowner will receive in return for conveying a wetland reserve easement. ACEP–WRE easement compensation is based upon the lowest of the fair market value of the land, a geographic area rate cap, or landowner offer. No substantive changes have been made to this section and only minor edits have been made to improve its accuracy and readability.

§ 1468.35 Wetland Reserve Enhancement Partnerships (WREP)

Section 1468.35 specifies how NRCS will implement a wetland reserve enhancement option with partners under ACEP–WRE. No changes were made in the section.

§ 1468.36 WRPO Payments

Section 1468.36 specifies that NRCS will provide funds towards the wetland reserve plan of operations (WRPO) on land enrolled through a wetland reserve easement or 30-year contract. Minor edits to improve accuracy and readability have been made in the section.

§ 1468.37 Easement and 30-Year Contract Participation Requirements

Section 1468.37 specifies requirements for ACEP–WRE participation. The 2018 Farm Bill addresses restoration and management within the easement and contract requirements. The section has been revised to conform with the 2018 Farm Bill provisions. The section also specifies that a landowner may be able to reserve grazing rights under a wetland reserve easement or 30-year contract if the reservation and use of the grazing rights is consistent with the historical natural uses of the land and long-term wetland protection and enhancement goals for which the easement or 30-year contract was established. The grazing rights are reserved to the landowner and are subject to a recorded exhibit to the deed that outlines the purposes and limitations of the grazing. Additionally, the grazing must comply with a WRPO. As a matter of existing ACEP policy, the WRPO may include a grazing management plan, which is updated as necessary. The 2018 Farm Bill added a specific reference to the grazing management plan and identified that the plan may be reviewed and modified as necessary, at least every 5 years. This section has been revised to incorporate this change.

§ 1468.38 Development and Revision of the WRPO and Associated Compatible Use Authorizations

The section specifies that WRPO is developed and updated by NRCS, in consultation with the State technical committee, with consideration of available site-specific technical input from the U.S. Fish and Wildlife Service (FWS) at the local level and others as appropriate. NRCS specifies in WRPO the manner in which land enrolled through a wetland reserve easement or 30-year contract will be restored, protected, enhanced, maintained, managed, and monitored to accomplish ACEP–WRE goals.

Paragraph (c) has been added to the section to more specifically identify the activities identified in the 2018 Farm Bill that should be addressed in the WRPO.

The 2018 Farm Bill included new provisions related to the evaluation and authorization of compatible uses on the easement area. The new provisions have been added to the section. Specifically, paragraph (d) provides that in evaluating and considering compatible uses NRCS will consider whether the use will facilitate the practical administration and management of the easement or contract area and ensure that the use furthers the functions and values for which the land was enrolled.

The section also specifies that the authorization of a compatible use is a determination made by NRCS, in its sole discretion, and that all compatible use authorizations are time-limited and may be modified or rescinded at any time. Compatible use authorizations issued by NRCS do not vest any right of any kind to the landowner.

§ 1468.39 Violations and Remedies

Section 1468.39 specifies how NRCS will address violations of a wetland reserve easement or 30-year contract.

Effective Date, Notice and Comment, and Paperwork Reduction Act

In general, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal**

Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to benefits and therefore is exempt from the APA requirements. Further, the regulations to implement the programs of chapter 58 of title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs, are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. ch. 35), and
- To use the authority under 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

For major rules, the Congressional Review Act requires a delay in the effect date of 60-days after publication to allow for Congressional Review. This rule is major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). The authority in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the ACEP regulations expeditiously to provide assistance to producers, NRCS and CCC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, NRCS and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the **Federal Register**.

NRCS invites interested persons to participate in this rulemaking by submitting written comments or views about the changes made by this interim rule. The most helpful comments reference a specific portion of the regulation, explain the reason for any recommended changes, and include supporting data and references to relevant section of either the 2018 Farm Bill or the 1985 Farm Bill. NRCS specifically seeks public comment on recommendations to streamline access to the program and input on new or existing ranking criteria that would assist NRCS in selecting projects that best further ACEP purposes. All comments received on or before the closing date for comments will be considered. NRCS will review and respond to the public comments in the ACEP final rule.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this interim rule, with request for comment, a significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized at the end of this preamble. The full cost benefit analysis is available on *www.regulations.gov.*

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that, in order to manage the private costs required to comply with federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfer rules'' are not covered by Executive Order 13771. If any of the increases in flexibilities for program participants results in cost-savings, they will be considered deregulatory and will be accounted for under Executive Order 13771 when the rule is finalized.

Clarity of the Regulation

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 this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by the Administrative Procedure Act or any law to publish a proposed rule for this rulemaking. Despite the Regulatory Flexibility Act not applying to this rule, the action only affects those entities who voluntarily participate in ACEP and in doing so receive its benefits. Compliance with the provisions of ACEP regulations is only required for those entities who choose to participate in this voluntary program.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). A draft programmatic EA has been prepared in association with this rulemaking. The analysis has determined there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement (EIS) is not required to be prepared (40 CFR part 1508.13). The draft EA and FONSI are available for review and comment for 30 days from the date of publication of this interim rule in the **Federal Register**. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the

current available draft of the ACEP EA and FONSI.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by 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 State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. This rule will not have retroactive effect. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule has significant Tribal implication that require ongoing adherence to Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill Tribal consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington, DC. The portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title II session. There were no specific comments from Tribes on the rule during the Tribal consultation. If a Tribe requests additional consultation, NRCS will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

Separate from Tribal consultation, communication, and outreach efforts are in place to assure that all producers, including Tribes (or their members), are provided information about the regulation changes. Specifically, NRCS obtains input through Tribal Conservation Advisory Councils. A Tribal Conservation Advisory Council may be an existing Tribal committee or department and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, programs, and impacts on Tribes. Tribal Conservation Advisory Councils provide a venue for agency leaders to gather input on Tribal interests. Additionally, NRCS will be holding several sessions with Indian Tribes and Tribal entities across the country in fiscal year 2019 to describe the 2018 Farm Bill changes to NRCS conservation programs, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations that will foster such improved access.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments or the private sector. Agencies generally must prepare a written statement, including a cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no federal mandates, as defined under Title II of UMRA, for State, local, and Tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rule applies is 10.931—Agricultural Conservation Easement Program.

E-Government Act Compliance

NRCS and CCC are 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.

Cost Benefit Analysis Summary

For ACEP, NRCS provides technical and financial assistance to help customers (farmers, ranchers, landowners, and other land users) address natural resource concerns. As discussed above, ACEP has two distinct components:

- The ALE component protects the agricultural use, future viability, and conservation values of eligible land by limiting non-agricultural uses of that land or protects grazing uses and related conservation values by restoring or conserving eligible land; and
- The WRE component restores, protects, and enhances wetlands.

The 2018 Farm Bill included mandatory changes to ACEP that NRCS must implement and changes over which NRCS has some discretion. Additionally, NRCS continues to have discretion over other program aspects that were unchanged by the 2018 Farm Bill, such as the allocation of funds. Together, these various changes and discretionary provisions may affect ACEP costs and the resulting impacts on natural resource concerns, but those changes are expected to be small. Because ACEP is voluntary, it does not impose any burden upon agricultural landowners who choose not to participate.

One of the most significant ACEP changes in the 2018 Farm Bill is to the existing contribution requirements for the non-Federal share under ACEP–ALE. This change adds flexibility for eligible entities to meet the non-Federal share requirement by no longer specifying a minimum cash contribution amount to be provided by the eligible entity and allowing the total of the non-Federal share to be comprised of a charitable donation or qualified conservation contribution from the private landowner. It also includes provisions for costs related to securing the easement to be included in the calculation of the non-Federal share.

There are 6 states and 1 territory (Alabama, Arkansas, Hawaii, Louisiana, Missouri, North Dakota, and Puerto Rico) that currently have no enrollment in ACEP–ALE. This may have been due to a lack of available financial resources for an eligible entity to meet the minimum cash contribution requirement or may be due to a lack of entities that meet the eligibility requirements to participate in ACEP–ALE. The changes to the non-Federal share requirements may result in increased ACEP–ALE enrollments in areas where enrollment has been limited due to a lack of financial resources available for entities that meet the ACEP–ALE eligibility requirements. To address these changes, this rule has eliminated a specified minimum cash contribution amount and incorporated provisions for considering costs related to securing the easement. These changes are applicable to all eligible entities in all States and as a result, it is anticipated that the amount of the Federal contribution toward ACEP–ALE easements will increase by 8 to10 percent.

Another change under the 2018 Farm Bill provides the Secretary with authority to enter into legal arrangements with eligible entities to conduct buy-protect-sell transactions under ACEP–ALE. In specific instances, NRCS may provide ACEP–ALE cost-share assistance to an eligible entity for the purchase of an agricultural land easement on private or Tribal agricultural land owned on a transitional basis by an eligible entity when the ownership of that land will be timely transferred to a qualified farmer or rancher. Buy-protect-sell transactions are intended to help farmers and ranchers acquire agricultural land they could not otherwise afford and to protect agricultural land that may have otherwise been developed or removed from agricultural production.

NRCS continues to have the discretion to rank and prioritize projects and to select individual applications based on their ability to achieve ACEP purposes and to assess and determine the appropriate allocation of funds for the acquisition of agricultural land and wetland easements. The 2018 Farm Bill does not identify enrollment level requirements between ACEP–WRE and ACEP–ALE. The relative emphasis NRCS places on these two program components depends on State and national priorities, environmental impacts, and local demand. It is anticipated that enrollment in ACEP will be consistent with historic enrollment trends.

List of Subjects in 7 CFR Part 1468

Agricultural, Flood Plains, Grazing lands, Natural resources, Soil conservation, and Wildlife.

■ For the reasons explained above, CCC revises 7 CFR part 1468 to read as follows:

PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

Subpart A—General Provisions

Sec.

1468.1 Applicability.
1468.2 Administration.
1468.3 Definitions.
1468.4 Appeals.
1468.5 Scheme or device.
1468.6 Subordination, exchange, modification, and termination.
1468.7 Transfer of land.
1468.8 Payments not subject to claims.
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Subpart B—Agricultural Land Easements

1468.20 Program requirements.
1468.21 Application procedures.
1468.22 Establishing priorities, ranking considerations, and project selection.
1468.23 ALE-agreements.
1468.24 Compensation and funding for agricultural land easements.
1468.25 Agricultural land easement deeds.
1468.26 Eligible entity certification.
1468.27 Buy-Protect-Sell transactions.
1468.28 Violations and remedies.

Subpart C—Wetland Reserve Easements

1468.30 Program requirements.
1468.31 Application procedures.
1468.32 Establishing priorities, ranking consideration, and project selection.
1468.33 Enrollment process.
1468.34 Compensation for easements and 30-year contracts.
1468.35 Wetland Reserve Enhancement Partnerships.
1468.36 WRPO payments.
1468.37 Easement and 30-year contract participation requirements.
1468.38 Development and revision of the WRPO and associated compatible use authorizations.
1468.39 Violations and remedies.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865–3865d.

Subpart A—General Provisions

§ 1468.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS). ACEP purposes include:

(1) Combining the purposes and coordinating the functions of the Wetlands Reserve Program established under section 1237, the Grassland Reserve Program established under section 1238N, and the Farmland Protection Program established under section 1238I, as such sections were in effect on the day before the date of enactment of the Agricultural Act of 2014;

(2) Restoring, protecting, and enhancing wetlands on eligible land;

(3) Protecting the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and

(4) Protecting grazing uses and related conservation values by restoring or conserving eligible land.

(b) The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Subpart B of this part sets forth additional requirements, policies, and procedures for implementation of the Agricultural Land Easements (ALE) component of ACEP.

(d) Subpart C of this part sets forth additional requirements, policies, and procedures for the Wetland Reserve Easement (WRE) component of ACEP.

(e) Easement lands previously enrolled under the predecessor programs Farm and Ranch Lands Protection Program (7 CFR part 1491), the Grassland Reserve Program (7 CFR part 1415), and the Wetlands Reserve Program (7 CFR part 1467) are considered enrolled in ACEP. Existing easements and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements, and any ACEP funding made available for implementation, will be in accordance with this part.

§ 1468.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS may seek advice from the State technical committee on considerations relating to implementation and technical aspects of the program, such as identification of lands of statewide importance or special significance, review of State-level geographic area rate caps, development of ranking criteria, wetland restoration objectives, management considerations, including compatible use criteria, or related technical matters.

(c) NRCS may obtain input from Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations will compel NRCS to take any action which NRCS determines does not serve the purposes of the program established by this part.

(d) Applications may be submitted on a continuous basis or in response to specific program solicitations. NRCS may announce one or more application cut-off dates for funding consideration within a given fiscal year.

(e) The Chief may allocate funds for purposes related to: Encouraging enrollment by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, Indian Tribes, and veteran farmers or ranchers as authorized by 16 U.S.C. 3844; implementing landscape and related initiatives, special pilot programs for easement management and monitoring; agreements with other agencies and organizations to assist with program implementation; coordination of easement enrollment across State boundaries; coordination of the development of easement plans for ACEP–WRE or conservation plans for ACEP–ALE; or for other goals of the ACEP found in this part.

(f) NRCS may delegate at any time its ACEP–WRE monitoring or management responsibilities to conservation organizations that have appropriate authority, expertise and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(g) NRCS may delegate at any time its ACEP–WRE monitoring, management, or enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(h) For ACEP–ALEs, the easement holder is responsible to ensure the easement is monitored on an annual basis and to provide annually to NRCS a monitoring report. For ACEP–WREs, NRCS or its delegate, is responsible to monitor the easement on an annual basis and comply with applicable reporting requirements.

(i) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, redelegating to other organizational levels, or from reversing or modifying any determination made under this part.

(j) The Chief may modify or waive nonstatutory, discretionary provisions of this part if the Chief determines the waiver of such discretionary provision is necessary to further the purposes of ACEP as part of an ACEP–ALE buy-protect-sell transaction or under the ACEP–WRE wetland reserve enhancement partnership option. The waiver must further ACEP purposes and be consistent with the specific ACEP–WRE or ACEP–ALE conservation purposes and objectives. No waiver will result in reducing the quality of wetland functions and values restored under ACEP–WRE, or the protection of agricultural viability under ACEP–ALE.

(k) To assist in ACEP implementation the Chief may also waive the applicability of the adjusted gross income limitation as authorized by section 1001D(b)(3) of the Food Security Act of 1985 for participating landowners if the Chief determines that environmentally sensitive land of special significance would be protected as a result of such waiver.

§ 1468.3 Definitions.

The definitions in this section apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

30-year Contract means an ACEP–WRE contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

Access means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

Acreage owned by Indian Tribes means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe, or the Bureau of Indian Affairs. This land may be also be referred to as ''Tribal land.''

Agreement means the document that specifies the rights, requirements, and responsibilities of NRCS and any persons, legal entities, or eligible entities participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, an ALE-agreement, a buy-protect-sell arrangement, a wetland reserve easement restoration agreement, a cooperative agreement, a grant agreement, a partnership agreement, or an interagency agreement.

Agreement to purchase means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the ACEP–WRE acquisition process.

Agricultural commodity means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.

Agricultural land easement means an easement or other interest in eligible land that is conveyed for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses.

Agricultural land easement plan means a document developed by the eligible entity that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. An agricultural land easement plan includes a description of the farm or ranch management system and the natural resource concerns on the land, describes the conservation measures and practices that may be implemented to address applicable resource concerns for which the easement was enrolled, and incorporates by reference any component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part.

Agricultural uses means those activities defined by a State's farm or ranch land protection program or where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, limit future agricultural viability, degrade soils or the agricultural nature

of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils, the agricultural nature of the land, or related natural resources.

ALE-agreement means the document that outlines the rights, requirements, roles, and responsibilities of NRCS and eligible entities participating in the program under subpart B, including cost-share payment provisions.

At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State conservationist, with advice from the State technical committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who:

(1) Has not operated a farm or ranch, or non-industrialized private forest land (NIPF), or who has operated a farm or ranch or NIPF for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch or NIPF.

(2) In the case of an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Buy-Protect-Sell transaction means a legal arrangement between an eligible entity and NRCS relating to land owned or being purchased by an eligible entity on a transitional basis during which an agricultural land easement will be secured on eligible private or Tribal land, and ownership of the land transferred to a qualified farmer or rancher following conditions specified in this part.

Certified entity means an eligible entity that NRCS has determined to meet the certification requirements in § 1468.26 for the purposes of ACEP–ALE.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated the authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency (FSA) has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Commodity Credit Corporation (CCC) is a wholly-owned government corporation within the Department of Agriculture.

Compatible use means a use or activity conducted on a wetland reserve easement that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area when performed according to amount, method, location, timing, frequency, intensity, and duration limitations prescribed by NRCS.

Conservation plan is for ACEP–ALE the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation-system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and where appropriate, may include conversion of highly erodible cropland to less intensive uses; and

(3) Is developed in accordance with 7 CFR part 12.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the program administered by the CCC as required by 16 U.S.C. 3831–3836.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose of, or to have the effect of, making possible the production of an agricultural commodity if such production would not have been possible but for such action, and before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland.

Cost-share payment means the payment made by NRCS to an eligible entity for the purchase of an ACEP–ALE easement as set forth in subpart B of this part.

Dedicated fund means an account held by a certified nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

Easement administration action means an easement subordination, easement modification, easement exchange, or easement termination.

Easement area means the portion of a parcel that is encumbered by an ACEP easement.

Easement exchange means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its rights or interests in an easement which are replaced by similar rights or interests in an easement that have equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area. NRCS is not required to exchange any of its rights or interests in an easement, and easement exchanges are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement.

Easement modification means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. NRCS is not required to modify any of its rights or interests in an easement, and easement modifications are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

Easement payment means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP–WRE, or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts under ACEP–WRE.

Easement restoration agreement means the agreement or contract NRCS enters into with the landowner or a third party to implement the WRPO on a wetland reserve easement or 30-year contract.

Easement subordination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate all or a portion of its rights or interests in an easement. NRCS is not required to subordinate any of its rights or interests in an easement, and easement subordinations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part. As determined by NRCS, the subordination must be in the public interest or further the practical administration of the program, minimally affect the easement acreage, and increase or have limited negative effects on the conservation values of the easement area.

Easement termination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate all or a portion of its rights or interests in an easement. The termination must address a compelling public need for which there is no practicable alternative even with avoidance and minimization of adverse impacts and must facilitate the practical administration of the program. The United States must be provided full compensation for such termination and any costs and damages related to the termination. NRCS is not required to terminate any of its rights or interests in an easement, and easement terminations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties that are subject to the requirements of this part. Unless and until the parties enter into a binding termination agreement, any party may withdraw its approval of a termination proposal at any time during the termination process.

Eligible activity means an action other than a conservation practice that has the effect of alleviating problems or improving the condition of the resources, such as ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an ACEP–WRE easement or 30-year contract as identified in the WRPO.

Eligible entity means an Indian Tribe, State government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; or

(2) Grazing uses and related conservation values by restoring or conserving eligible land.

Eligible land means private or acreage owned by Indian Tribes that NRCS has determined to meet the requirements of § 1468.20 or § 1468.30 of this part.

Fair market value means the value of an agricultural land easement as determined using the Uniform Standards of Professional Appraisal Practice, an areawide market analysis or survey, or another industry-approved method approved by the Chief, as established in subpart B or, for a wetland reserve easement, the value of the land as determined using the Uniform Standards of Professional Appraisal Practices or areawide market analysis or survey, as established in subpart C.

Farm and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops that are locally important but not identified as having national or statewide importance. Criteria for defining and delineating this land are to be determined by the appropriate local agency or agencies. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm and ranch land of statewide importance means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

Farm or ranch succession plan means a general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include specific intra-family succession agreements or business asset transfer strategies to create opportunities for new or beginning farmers or ranchers, veteran farmers or ranchers, or other historically underserved landowners.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, animal, and energy resources applicable to the local area for which it is prepared.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Forest management plan means a site-specific plan that describes management practices that conserve, protect, or enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a) or other plan approved by the State forester.

Future viability means the legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values such as management of the agricultural land easement area consistent with an agricultural land easement plan.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

Grassland of special environmental significance means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to non-grassland uses or fragmentation; and the land:

(1)(i) Is rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or

(ii) Is improved, naturalized pastureland, rangeland, or wet meadows;

(2)(i) Provides, or could provide, habitat for threatened or endangered species or at-risk species,

(ii) Protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or

(iii) Provides protection of highly sensitive natural resources as identified by NRCS, in consultation with the State technical committee.

Grasslands management plan means a site-specific plan that describes the grassland resources, the management system and practices that conserve, protect, or enhance the viability of the grassland, and as applicable, the habitat, species, or sensitive natural resources.

Grazing management plan means for ACEP–WRE, a site-specific plan developed as a component of the WRPO that provides for grazing of the grass and grass-like cover while accomplishing the wetland functions and values of the easement area as identified by NRCS.

Historical and archaeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 54 U.S.C. 300101, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Historically underserved landowner means a beginning, limited resource, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

Imminent harm means easement violations or threatened violations that, as determined by NRCS, would likely cause immediate and significant degradation to the conservation values for which the easement was acquired.

Impervious surface means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established as required by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Land evaluation and site assessment system means the land evaluation system approved by NRCS and used, when applicable, to rank land for farm and ranch land protection purposes based on soil potential for agriculture, as well as social and economic factors such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of eligible land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. State and local governments are not eligible as landowners. For ACEP–ALE, nongovernmental organizations and Indian tribes that qualify as eligible entities are not eligible as landowners unless otherwise determined by the Chief following an approved buy-protect-sell transaction.

Lands substantially altered by flooding means agricultural lands where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop and retain wetland soil, hydrology, and vegetation characteristics over time.

Limited resource farmer or rancher means either:

(1)(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Maintenance means work performed to keep the wetland reserve easement lands functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work to manage, prevent deterioration, repair damage, or replace conservation practices or eligible activities on a wetland reserve easement, as approved or conducted by NRCS.

Monitoring report means a report, the contents of which are formulated and prepared by the easement holder, or their delegate, that accurately documents on an annual basis whether the land subject to easement is in compliance with the terms and conditions of the easement.

Natural Resources Conservation Service (NRCS) means an agency of the U.S. Department of Agriculture (USDA), including when NRCS carries out program implementation using the funds, facilities, or authorities of the CCC.

Nongovernmental organization means any organization that for purposes of qualifying as an eligible entity under subpart B:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described in—

(i) Section 509(a)(1) and (2) of that Code, or

(ii) Section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Nonindustrial private forest land (NIPF) means rural land, as determined by the NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Other interests in land include any right in real property other than easements that are recognized by State law that the Chief determines can be purchased by an eligible entity to further the agricultural use of the land and other ACEP–ALE purposes.

Other productive soils means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland or farm and ranch land of statewide and local importance.

Parcel means the defined area of land and may be a portion or all of the area of land that is owned by the landowner.

Participant means a person, legal entity, Indian Tribe, native corporation,

or eligible entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an agreement to purchase, an agreement to enter a 30-year contract, or an ALE-agreement.

Pending offer means a written bid, contract, or option between a landowner and an eligible entity for the acquisition of an agricultural conservation easement in perpetuity, or for the maximum duration allowed by State law, before the legal title to these rights has been conveyed for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land; or

(2) Grazing uses and related conservation values by restoring or conserving eligible land.

Permanent easement means an easement that lasts in perpetuity.

Person means a natural person.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by NRCS.

Private land means land that is not owned by a governmental entity and includes acreage owned by Indian Tribes, as defined in this part.

Right of enforcement means the right of the United States to enforce the easement entered into under this part in those instances in which the grantee of the easement does not fully protect the interests provided to the grantee under the easement.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For a legal entity, at least 50-percent ownership in the legal entity must be held by socially disadvantaged individuals.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State and includes the directors of the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State technical committee means a committee established under 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops as determined by NRCS. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Veteran farmer or rancher means a producer who meets the definition in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)).

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Supports a prevalence of such vegetation under normal circumstances.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including—

(1) Habitat for migratory birds and other wildlife, in particular at-risk species.

(2) Protection and improvement of water quality.

(3) Attenuation of water flows due to flood.

(4) The recharge of ground water.

(5) Protection and enhancement of open space and aesthetic quality.

(6) Protection of flora and fauna which contributes to the Nation's natural heritage.

(7) Carbon sequestration.

(8) Contribution to educational and scientific scholarship.

Wetland reserve easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the United States, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Wetland reserve plan of operations (WRPO) means the document that is developed or approved by NRCS that identifies how the wetland functions and values and associated habitats on the easement will be restored, improved, protected, managed, maintained, and monitored to achieve the purposes of the wetland reserve easement enrollment.

Wetland restoration means the rehabilitation of degraded or lost wetland and associated habitats pursuant to published State-specific criteria and guidelines developed in coordination with the State technical committee in a manner such that:

(1) The original, native vegetative community and hydrology are, to the extent practical, reestablished; or

(2) A hydrologic regime and native vegetative community different from what likely existed prior to degradation of the site is established that will:

(i) Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife; or

(ii) Address local resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.

§ 1468.4 Appeals.

(a) *ACEP–ALE eligibility of entities.* An entity which has submitted an ACEP–ALE application to be considered an eligible entity may obtain a review of any administrative determination concerning their eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(b) *ACEP–WRE applicants and participants.* An applicant or participant in the ACEP–WRE may obtain a review of any administrative determination concerning eligibility for participation or receipt of payment utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(c) *Easement administration and management determinations under ACEP after easement closing.* NRCS determinations that are made pursuant to its rights or interests in an ACEP-funded easement after closing may only be appealed to the State conservationist as specified in the notice provided to the landowner or easement holder when NRCS exercises its rights under the easement. Such determinations are not

subject to appeal under 7 CFR parts 11 or 614.

§ 1468.5 Scheme or device.

(a) In addition to other penalties, sanctions, or remedies that may apply, if it is determined by NRCS that anyone has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid during the applicable period may be withheld or be required to be refunded with interest, thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving anyone of a program benefit, or for the purpose of obtaining a payment to which they would otherwise not be entitled.

§ 1468.6 Subordination, exchange, modification, and termination.

(a) After an easement has been recorded, no subordination, modification, exchange, or termination will be made in any interest in land, or portion of such interest, except as approved by the NRCS. NRCS may approve such easement administration actions if NRCS determines, in accordance with the sequencing considerations under the National Environmental Policy Act, that—

(1)(i) The subordination, modification, or exchange action results in no net loss of easement acres, and is in the public interest or will further the practical administration and management of the easement area or the program, as determined by the NRCS, or

(ii) The termination action will address a compelling public need for which there is no practicable alternative even with avoidance and minimization, and will further the practical administration and management of the easement area or the program, as determined by the NRCS.

(2) For modification or exchange actions—

(i) There is no reasonable alternative that would avoid the easement area, or if the easement area cannot be avoided entirely, then the preferred alternative must minimize impacts to the original easement area and its conservation functions and values to the greatest extent practicable and any remaining adverse impacts must be mitigated, as determined by NRCS, at no cost to the government,

(ii) The action is consistent with the original intent of the easement and is consistent with the purposes of the program, and

(iii) The action results in equal or greater conservation functions and value and equal or greater economic value to the United States. A determination of equal or greater economic value to the United States will be made in accordance with an approved easement valuation methodology for agricultural land easements under subpart B or for wetland reserve easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.

(3) For subordination actions, the action—

(i) Increases conservation functions and values or has a limited negative effect on conservation functions and values;

(ii) Is at no cost to the Government; and

(iii) Notwithstanding paragraph (a)(4) of this section, will only minimally affect the acreage subject to the interest in land.

(4) For termination actions, the action—

(i) Is in the interest of the Federal Government; and

(ii) The United States will be fully compensated for the fair market value of the interest in land including any costs and damages related to the termination.

(5) The easement administration action will not affect more than 10 percent of the original easement area unless NRCS determines that it is impracticable to achieve program purposes on the original easements area, in which case NRCS may authorize a greater percentage of the original easement area to be affected.

(6) The landowner and, if applicable, the agricultural land easement holder agrees to such easement administration action prior to NRCS considering that such easement administration action may be approved.

(b) Easement subordinations or modifications are preferred to easement exchanges that may involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will result in equal or greater conservation and economic values to the United States.

(c) Replacement of easement acres as part of an easement exchange must occur within the same State and within the same eight-digit watershed as determined by the hydrologic unit codes developed by the U.S. Geological Survey.

(d) Where NRCS determines that recordation of an amended or new easement deed is necessary to affect an easement administration action under this section, NRCS may use the most recent version of the ACEP deed document or deed terms approved by NRCS. The amended or new easement deed must be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation of documents.

(e) Modification or exchange of all or a portion of an interest in land enrolled in ACEP–ALE may not increase any payment to an easement holder.

(f)(1) A termination action must meet criteria identified in this part and are limited to those circumstances where NRCS determines it is in the Federal Government's interest to terminate all or a portion of the interest in the land enrolled in the program, that the purposes of the program can no longer be achieved on the original easement area, or the terms of the easement are no longer enforceable and there are no acceptable replacement acres available.

(2) NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, legal filing fees, costs relating to the termination, and any damages determined appropriate by NRCS.

(3) At least 90 days prior to taking any termination action, written notice of such termination action will be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(g) Insofar as is consistent with the easement and applicable law, NRCS may approve modifications to an easement plan that do not affect provisions of the easement. Easement plans include any conservation plan, WRPO, wetland reserve easement restoration agreements, grazing management plan, habitat management plans, or other plans required as a condition of enrollment. Any easement plan modification must meet this part and must result in equal or greater conservation benefits on the enrolled land.

§ 1468.7 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to recording the easement in the applicable land records or executing the 30-year contract may void the availability of ACEP funding for that transaction, unless the new landowner is determined eligible, the transfer is approved by NRCS, and the new landowner is willing to comply with ACEP requirements.

(b) *Payments to participants.* For wetland reserve easements with annual installment payments, any remaining easement payments will be made to the original participants unless NRCS receives an assignment of proceeds.

(c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS will bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1468.8 Payments not subject to claims.

Any cost-share, contract, agreement, or easement payment or portion, thereof, due any person, legal entity, Indian Tribe, eligible entity, or other party under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States.

§ 1468.9 Assignments.

Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1468.10 Environmental markets.

(a) *Ecosystem services credits for conservation improvements under a wetland reserve easement.* Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the rights or interests granted under the easement to the United States.

(b) *Ecosystem services credits related to an agricultural land easement.* Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the interests granted under the easement to the grantee or to the United States right of enforcement.

(c) *Voluntary action.* ACEP funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

Subpart B—Agricultural Land Easements

§ 1468.20 Program requirements.

(a) *General.* (1) Under ACEP–ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is—

(i) Subject to a written pending offer; or

(ii) Owned or in the process of being purchased by the eligible entity as part of an approved buy-protect-sell transaction.

(2) To participate in ACEP–ALE, eligible entities as identified in (b) below must submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on eligible land. Eligible entities must enter into an ALE-agreement with NRCS and address the ACEP–ALE deed requirements specified therein, the effect of which is to protect natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses.

(3) Under the ALE-agreement, unless otherwise specified in this part, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50 percent of the fair market value of the agricultural land easement and the eligible entity will provide a share that is at least equivalent to the Federal share.

(4) The duration of each agricultural land easement or other interest in land will be in perpetuity or the maximum duration allowed by State law.

(b) *Entity eligibility.* (1) To be eligible to receive ACEP–ALE funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in § 1468.3. In addition, eligible entities interested in receiving ACEP–ALE funds must provide NRCS sufficient evidence of—

(i) A commitment to long-term conservation of agricultural lands,

(ii) A capability to acquire, manage, and enforce easements,

(iii) Sufficient number of staff dedicated to monitoring and easement stewardship,

(iv) The estimated easement and related costs and the anticipated sources of funding sufficient to meet the non-Federal share requirements for each parcel as described in § 1468.24, and

(v) For individual parcels on which the eligible entity's own cash resources will comprise less than 10 percent of the fair market value of the agricultural land easement for payment of easement compensation to the landowner, the eligible entity must provide NRCS specific evidence of funding available to manage, monitor, and enforce the easement.

(2) All eligible entities identified on an application or ALE-agreement must—

(i) Ensure that their records and the records of all landowners of parcels identified on an application have been established in the USDA customer records system and that USDA has all the documentation needed to establish these records, and

(ii) Eligible entities must also comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170, and maintain such registration for the duration of the ALE-agreement.

(c) *Landowner eligibility.* Under ACEP–ALE, all parcel landowners, including an eligible entity owner of private or Tribal land in an approved buy-protect-sell transaction, must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12,

(2) Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions of 7 CFR part 1400;

(3) Agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and

(4) Have their records established in the USDA customer records system.

(d) *Land eligibility.* (1) Land will only be considered eligible for enrollment in ACEP–ALE based on NRCS determination that such private or Tribal agricultural land, including land on a farm or ranch that—

(i) Is subject to a written pending offer by an eligible entity or part of an approved buy-protect-sell transaction;

(ii)(A) Contains at least 50 percent prime or unique farmland, or designated farm and ranch land of State or local importance unless otherwise determined by NRCS,

(B) Contains historical or archaeological resources,

(C) The enrollment of which would protect grazing uses and related conservation values by restoring or conserving land, or

(D) Furthers a State or local policy consistent with the purposes of the ACEP–ALE;

(iii) Is—

(A) Cropland;

(B) Rangeland;

(C) Grassland or land that contains forbs or shrubland for which grazing is the predominant use;

(D) Located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;

(E) Pastureland; or

(F) Nonindustrial private forest land that contributes to the economic viability of a parcel offered for enrollment or serves as a buffer to protect such land from development; and

(iv) Possesses suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program.

(2) If land offered for enrollment is determined eligible under paragraph (d)(1) of this section, then NRCS may also enroll land that is incidental to the eligible land if the incidental land is determined by NRCS to be necessary for the efficient administration of an agricultural land easement.

(3) Eligible land, including eligible incidental land, may not include nonindustrial private forest land of greater than two-thirds of the easement area unless waived by NRCS with respect to lands identified by NRCS as sugar bush that contributes to the economic viability of the parcel.

(e) *Ineligible land.* The land specified in paragraphs (e)(1) through (7) of this section is not eligible for enrollment in ACEP–ALE:

(1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes;

(2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government;

(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values including those listed in the statute under eligible land unless the eligible land is owned on a transitional basis as part of an approved buy-protect-sell transaction;

(4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the program;

(5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or existing rights-of-way, infrastructure development, or adjacent land uses;

(6) Land which NRCS determines to have unacceptable exceptions to clear title or insufficient legal access; or

(7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP–ALE unless it is determined by NRCS that the third-party rights will not harm or interfere with the conservation values or agricultural uses of the easement, that any methods of exploration and extraction will have only a limited and localized impact on the easement, and the limitations are specified in the ALE deed.

(f) *Buy-Protect-Sell transaction land eligibility.* (1) NRCS may enter into a buy-protect sell transaction with an eligible entity on a parcel that—

(i) Otherwise meets the eligibility criteria described in this section,

(ii) Is subject to conditions, as determined by NRCS, that necessitate the ownership of the parcel by the eligible entity on a transitional basis prior to the creation of an agricultural land easement, such as imminent threat of development, including, but not limited to, planned or approved conversion of grasslands to more intensive agricultural uses, and

(iii) Is owned by or is in the process of being purchased by the eligible entity.

(2) At the time of application, the eligible entity must provide NRCS evidence of ownership or active purchase of the parcel, such as a valid purchase agreement.

(3) The eligible entity must meet all program requirements and any specific provisions related to buy-protect-sell transactions as specified in this part.

§ 1468.21 Application procedures.

(a) To apply for enrollment an eligible entity must submit an entity application for an ALE-agreement and any associated individual parcel applications to NRCS. For buy-protect-sell transactions, additional information may be required at the time of application as identified by NRCS.

(b) NRCS may conduct initial eligibility determinations for the fiscal year an application is submitted. As determined by NRCS, the entity eligibility requirements must be met for the fiscal year in which the ALE-agreement is executed, and the land and landowner must be eligible for the fiscal year the parcel is approved for funding through an ALE-agreement. NRCS eligibility determinations are based on the application materials provided by the eligible entity, onsite assessments, and the criteria in § 1468.20.

§ 1468.22 Establishing priorities, ranking considerations, and project selection.

(a) NRCS will use national and State criteria to rank and select eligible parcels for funding. The national ranking criteria will comprise at least half of the ranking score. The State criteria will be developed by NRCS on a State-by-State basis, with input from the State technical committee. The weighting of ranking criteria, including adjustments to account for geographic differences, will be developed to maximize the benefit of the Federal investment under the program. Parcels are ranked and selected for funding at the State level.

(b) The national ranking criteria are—

(1) Percent of prime, unique, and other important farmland soils in the parcel to be protected;

(2) Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Existence of a farm or ranch succession plan or similar plan established to address agricultural viability for future generations;

(8) Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to

nonagricultural use or protects grazing uses and related conservation values;

(9) Proximity of the parcel to other agricultural operations and agricultural infrastructure;

(10) Maximizing the protection of contiguous or proximal acres devoted to agricultural use;

(11) Whether the land is currently enrolled in CRP in a contract that is set to expire within 1 year and is grassland that would benefit from protection under a long-term easement;

(12) Decrease in the percentage of acreage of permanent grassland, pasture, and rangeland, other than cropland and woodland pasture, in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(13) Percent of the fair market value of the agricultural land easement that is the eligible entity's own cash resources for payment of easement compensation to the landowner and comes from sources other than the landowner; and

(14) Other criteria as determined by NRCS.

(c) State or local criteria as determined by NRCS, with advice of the State technical committee, may only include—

(1) The location of a parcel in an area zoned for agricultural use;

(2) The eligible entity's performance in managing and enforcing easements. Performance must be measured by the efficiency by which easement transactions are completed or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported;

(3) Multifunctional benefits of farm and ranch land protection including—

(i) Social, economic, historic, and archaeological benefits;

(ii) Enhancing carbon sequestration;

(iii) Improving climate change resiliency;

(iv) At-risk species protection;

(v) Reducing nutrient runoff and improving water quality;

(vi) Other related conservation benefits.

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional agricultural or conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected or improved;

(6) Score in the land evaluation and site assessment system as identified in 7 CFR part 658 or equivalent measure for grassland enrollments, to serve as a measure of agricultural viability (access to markets and infrastructure);

(7) Measures that will be used to maintain or increase agricultural viability, such as succession plans, agricultural land easement plans, or entity deed terms that specifically address long-term agricultural viability; and

(8) Other criteria determined by NRCS that will account for geographic differences provided such criteria allow for the selection of parcels that will achieve ACEP–ALE purposes and continue to maximize the benefit of the Federal investment under the program.

(d) If NRCS determines that the purchase of two or more agricultural land easements are comparable in achieving program goals, NRCS will not assign a higher priority to any one of these agricultural land easements solely on the basis of lesser cost to the program.

(e) NRCS will rank all eligible parcels that have been submitted prior to an application cut-off date in accordance with the national and State ranking criteria before selecting parcels for funding.

(f) Eligible parcels selected for funding by NRCS will be identified in an agreement executed by NRCS and an eligible entity, either as part of the ALE-agreement or through a supplemental arrangement as agreed to by the parties.

(g) Pursuant to the terms of the ALE-agreement, eligible parcels may be selected for funding in a fiscal year subsequent to the fiscal year in which the parties entered into an ALE-agreement.

§ 1468.23 ALE-agreements.

(a) NRCS will enter into an ALE-agreement with a selected eligible entity that stipulates the terms and conditions under which the eligible entity is permitted to use ACEP–ALE funding and will incorporate all ACEP–ALE requirements. NRCS will make available to eligible entities the ALE-agreement terms and conditions, including any applicable templates, based on enrollment type. The ALE-agreement will address—

(1) The interests in land to be acquired, including the United States' right of enforcement, the deed requirements specified in this part, as well as the other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with ACEP–ALE funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on easements acquired with ACEP–ALE funds;

(5) The requirement for any conservation plan for highly erodible cropland or agricultural land easement plans to be developed as required or agreed-to prior to execution of the easement deed and payment of easement compensation to the landowner;

(6) As applicable, the allowance of eligible parcel substitution upon mutual agreement of the parties;

(7) The certification by the landowner at the time of easement execution and payment of easement compensation of the extent of any charitable contribution or other donation the landowner has provided to the eligible entity;

(8) The submission of documentation of procured costs for each parcel, including appraisal, boundary survey, phase-I environmental site assessment, title commitment or report, title insurance, and closing cost if such procured costs are to be considered as part of the eligible entity's non-Federal share; and

(9) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(10) For buy-protect-sell transactions, the ALE-agreement will also include the requirements identified in § 1468.27.

(b) The term of standard ALE-agreements, except as described in § 1468.27 for ALE-agreements for approved buy-protect-sell transactions, will be:

(1) Up to 5 fiscal years following the fiscal year the agreement is signed for certified entities; and

(2) Up to 3 fiscal years and not to exceed 5 fiscal years following the fiscal year the agreement is signed for other eligible entities.

(c) Eligible parcels selected for funding by NRCS will be identified on an attachment to the ALE-agreement. The attachment will include landowners' names, acreage of the easement area, the estimated fair market value, the estimated Federal contribution, and other relevant information.

(d) The ALE-agreement will require the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

(e) With NRCS approval, the eligible entity may substitute acres within a pending easement offer. Substituted acres must not reduce the easements capability in meeting program purposes.

(f) With NRCS approval, an eligible entity may substitute pending easement offers within a standard ALE-agreement. The substituted landowner and easement offer must meet eligibility

criteria as described in § 1468.20. NRCS may require re-ranking of substituted acres within an easement offer and substituted easement offers within an ALE-agreement. Substitutions are not authorized under ALE-agreements for buy-protect-sell transactions.

§ 1468.24 Compensation and funding for agricultural land easements.

(a) *Determining the fair market value of the agricultural land easement.* (1) The Federal share will not exceed 50 percent of the fair market value of the agricultural land easement, as determined using—

(i) An appraisal using the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions,

(ii) An areawide market analysis or survey, or

(iii) Another industry-approved method approved by NRCS.

(2) Prior to receiving funds for an agricultural land easement, the eligible entity must provide NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets the requirements of this part.

(3) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions as selected by the eligible entity.

(4) If the fair market value of the easement is determined using an areawide market analysis or survey, the areawide market analysis or survey must be completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis or survey. The use of areawide market analysis or survey must be approved by NRCS prior to entering into an ALE-agreement.

(5) Requests to use another industry-approved method must be submitted to NRCS and approved by NRCS prior to entering into the ALE-agreement. NRCS will identify the applicable industry standards and any associated NRCS specifications based on the methodology approved.

(6) NRCS will review for quality assurance purposes, appraisals, areawide market analysis or surveys, valuation reports, or other information resulting from another industry-approved method approved for use by NRCS.

(7) Eligible entities must provide a copy of the applicable report or other information used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned easement closing date.

(8) Prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner, NRCS must approve the determination of the fair market value of the agricultural land easement upon which the Federal share will be based.

(b) *Determining the Federal share of the agricultural land easement.* (1) Subject to the statutory limits, NRCS may provide up to 50 percent of the fair market value of the agricultural land easement. An eligible entity will provide a non-Federal share that is at least equivalent to the Federal share.

(2) The non-Federal share provided by an eligible entity may be comprised of—

(i) The eligible entity's own cash resources for payment of easement compensation to the landowner;

(ii) A charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner;

(iii) The procured costs paid by the eligible entity to a third-party for an appraisal, boundary survey, phase-I environmental site assessment, title commitment or report, title insurance, or closing cost; and

(iv) Up to 2 percent of the fair market value of the agricultural land easement for easement stewardship and monitoring costs where the costs as identified in paragraphs (b)(2)(i) through (iii) of this section are not sufficient to meet the non-Federal share;

(3) NRCS may authorize a waiver to increase the Federal share of the cost of an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if—

(i) NRCS determines the lands to be enrolled are grasslands of special environmental significance as defined in this part,

(ii) An eligible entity provides a non-Federal share that is at least equivalent to the Federal share or comprises the remainder of the fair market value of the agricultural land easement, whichever is less, and

(iii) The eligible entity agrees to incorporate and enforce the additional necessary deed restrictions to manage and enforce the easement to ensure the grassland of special environmental significance attributes are protected.

(c) *Uses of NRCS ACEP–ALE funds.* (1) ACEP–ALE funds may not be provided or used for eligible entity expenditures for expenses, such as: Appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, phase I environmental site assessments, closing services, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(2) NRCS will conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and hazardous materials reviews.

(3) NRCS may provide technical assistance for the development of a conservation plan on those portions of a parcel that contain highly erodible cropland, or if requested, to assist in compliance with the terms and conditions of easements.

§ 1468.25 Agricultural land easement deeds.

(a) Under ACEP–ALE, a landowner grants an easement to an eligible entity with which NRCS has entered into an ALE-agreement. The easement deed will require that the easement area be maintained in accordance with ACEP–ALE goals and objectives for the term of the easement.

(b) The term of an agricultural land easement must be in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum duration allowed under State law.

(c) The eligible entity may use its own terms and conditions in the agricultural land easement deed, but the agricultural land easement deed must address the deed requirements as specified by this part and by NRCS in the ALE-agreement.

(d) All deeds, as further specified in the ALE-agreement, must address the following regulatory deed requirements:

(1) Include a right of enforcement clause for NRCS. NRCS will specify the terms for the right of enforcement clause, including that such interest in the agricultural land easement:

(i) May be used only if the terms and conditions of the easement are not enforced by the eligible entity;

(ii) Extends to a right of inspection only if the holder of the easement fails to provide monitoring reports in a timely manner or NRCS has a reasonable and articulable belief that the

terms and conditions of the easement have been violated;

(iii) Remains in effect for the duration of the easement and any changes that affect NRCS's interest in the agricultural land easement must be reviewed and approved by NRCS under § 1468.6 of this part.

(2) Specify that impervious surfaces will not exceed 2 percent of the ACEP–ALE easement area, excluding NRCS-approved conservation practices unless NRCS grants a waiver as follows:

(i) The eligible entity may request a waiver of the 2-percent impervious surface limitation at the time an individual parcel is approved for funding,

(ii) NRCS may waive the 2-percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces,

(iii) Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement is being acquired,

(iv) Eligible entities may submit an impervious surface limitation waiver process to NRCS for review and consideration. The eligible entities must apply any approved impervious surface limitation waiver processes on an individual easement basis, and

(v) NRCS will not approve blanket waivers or entity blanket waiver processes of the impervious surface limitation. All ACEP–ALE easements must include language limiting the extent of impervious surfaces within the easement area.

(3) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP–ALE.

(4) Include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the agricultural land easement and this part. Any substantive amendment, including any subordination of the terms of the easement or modifications, exchanges, or terminations of the easement area, must be approved by NRCS and the easement holder in accordance with § 1468.6 prior to recordation or else the action is null and void.

(5) Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.

(6) Limit the subdivision of the property subject to the agricultural land easement, except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS.

(7) Prohibit subsurface mineral development unless the terms of the deed, as determined by NRCS, specify that any subsurface mineral development allowed by the eligible entity on the easement area must—

(i) Be conducted in accordance with applicable State law;

(ii) Have a limited and localized impact;

(iii) Not harm the agricultural use and conservation values of the land subject to the easement;

(iv) Not materially alter or affect the existing topography;

(v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the agricultural use or conservation values of the land subject to the easement and is approved by NRCS prior to the initiation of mineral development activity;

(vi) Not be accomplished by any surface mining method;

(vii) Be within the impervious surface limits of the easement under paragraph (d)(2) of this section;

(viii) Use practices and technologies that minimize the duration and intensity of impacts to the agricultural use and conservation values of the land subject to the easement; and

(ix) Ensure that each area impacted by the subsurface mineral development are reclaimed and restored by the holder of the mineral rights at cessation of operation.

(8) Include specific protections related to the purposes for which the agricultural land easement is being acquired, including provisions to protect historical or archaeological resources or grasslands of special environmental significance.

(9) For parcels with highly erodible cropland, include terms that ensure compliance with the conservation plan that will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations.

(10) Include any additional provisions needed to address the attributes for which a parcel was ranked and selected for funding by NRCS, such as the purchase of the agricultural land easement, the development and maintenance of an agricultural land easement plan, or use of the minimum deed terms as described in paragraph (f) of this section.

(11) Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the agricultural land easement under ownership of a farmer or rancher.

(12) Include other minimum deed terms specified by NRCS to ensure that ACEP–ALE purposes are met.

(e) NRCS reserves the right to require additional specific language or require removal of language in the agricultural land easement deed to ensure the enforceability of the easement deed, protect the interests of the United States, or to otherwise ensure ALE purposes will be met.

(f) For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use as provided herein:

(1) NRCS will make available for an eligible entity's use a standard set of minimum deed terms that satisfactorily address the deed requirements in paragraph (d) of this section and may be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed, or as an addendum that is attached and incorporated by reference into the deed. The standard minimum deed terms addendum will specify the terms that will prevail in the event of a conflict.

(2) If an eligible entity agrees to use the standard set of minimum deed terms as published by NRCS, NRCS and the eligible entity will identify in the ALE-agreement the use of the standard minimum deed terms as a requirement and National Office review of individual deeds may not be required. NRCS may place priority on applications where an eligible entity agrees to use the standard set of minimum deed terms as published.

(3) The eligible entity must submit all individual agricultural land easement deeds to NRCS at least 90 days before the planned easement closing date and be approved by NRCS in advance of use.

(4) Eligible entities with multiple eligible parcels may submit an agricultural land easement deed template for review and approval. The deed templates must be reviewed and approved by NRCS in advance of use.

(5) NRCS may conduct an additional review of the agricultural land easement deeds for individual parcels prior to the execution of the easement deed by the landowner and the eligible entity to ensure that they contain the same language as approved by the National Office and that the appropriate site-specific information has been included.

(g) The eligible entity will acquire, hold, manage, monitor, and enforce the

easement. The eligible entity may have the option to enter into an agreement with appropriately qualified governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management, and enforcement responsibilities.

(h) All agricultural land easement deeds acquired with ACEP–ALE funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the ALE-agreement.

§ 1468.26 Eligible entity certification.

(a) To be considered for certification, an entity must submit a written request for certification to NRCS, which specifically addresses the items in paragraphs (a)(1) through (7) of this section:

(1) An explanation of how the entity meets the requirements identified in § 1468.20(b) of this section;

(2) An agreement to use for ACEP–ALE funded acquisitions easement valuation methodologies identified in section § 1468.24 of this part;

(3) A showing of a demonstrated record of completing acquisition of easements in a timely fashion;

(4) A showing that it has the capacity to monitor and enforce the provisions of easement deeds and history of such monitoring and enforcement;

(5) A plan for administering easements enrolled under this part, as determined by NRCS;

(6) Proof that the eligible entity—

(i) Has been accredited by the Land Trust Accreditation Commission and has acquired not fewer than 10 agricultural land easements under ACEP–ALE, the Farm and Ranch Lands Protection Program, or the Farmland Protection Program;

(ii) Is a State department of agriculture or other State agency with statutory authority for farm and ranchland protection and has acquired not fewer than 10 agricultural land easements under ACEP–ALE or its predecessor programs; or

(iii) Holds, manages, and monitors a minimum of 25 agricultural land conservation easements, of which a minimum of 10 of these easements are agricultural land easements under ACEP–ALE or its predecessor programs, and if the eligible entity is a nongovernmental organization, provides evidence that the eligible entity possesses a dedicated fund for the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(7) Successfully met the responsibilities of the eligible entity under the applicable agreements with NRCS, as determined by NRCS, relating to agricultural land easements that the eligible entity has acquired under the program or any predecessor program;

(b) NRCS will notify an eligible entity in writing whether they have been certified and the rationale for the agency's decision. When NRCS determines an eligible entity qualifies as certified—

(1) NRCS may enter into an ALE-agreement with the certified entity that is for a period of up to 5 fiscal years following the fiscal year the agreement is executed. NRCS will review and select parcel applications submitted for funding by certified entities as specified in § 1468.22. Funding for selected parcels is identified on an attachment to the ALE-agreement.

(2) The terms of the ALE-agreement will include the regulatory deed requirements specified in § 1468.25 of this part that must be addressed in the deed to ensure that ACEP–ALE purposes will be met without requiring NRCS to pre-approve each easement transaction prior to closing.

(i) Certified entities may purchase easements without NRCS approving the agricultural land easement deeds, baseline reports, titles, or appraisals before the purchase of the easement;

(ii) Certified entities will prepare the agricultural land easement deeds, baseline reports, titles, and appraisals in accordance with NRCS requirements as identified in the ALE-agreement;

(3) NRCS will conduct quality assurance reviews of a percentage of the closed agricultural land easement transactions and annual monitoring reports submitted by the certified entity; and

(4) NRCS will provide the certified entity an opportunity to correct errors or remedy deficiencies identified in the NRCS quality assurance review. If the certified entity fails to remedy the identified items to NRCS's satisfaction, NRCS will consider whether to allow the certified entity to continue to purchase ALE-funded easements without prior NRCS approval, to decertify the entity in accordance with paragraph (c) of this section, or, require the certified entity to take administrative steps necessary to remedy the deficiencies.

(c)(1) NRCS will conduct a quality assurance review of the certified entity a minimum of once every 3 fiscal years to ensure that the certified entities are meeting the certification criteria established in this section.

(2) If NRCS determines that the certified entity no longer meets these criteria, the Chief will—

(i) Provide the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If NRCS determines the certified entity does not meet the criteria established in this part after the 180 days, NRCS will send written notice of decertification. This notice will specify the actions that have not been completed to retain certification status, the actions the entity must take to regain certification status, the status of funds in the ALE-agreement; and the eligibility of the entity to apply for future ACEP–ALE funds. The entity may contest the notice of decertification in writing to NRCS within 20 calendar days of receipt of the notice of decertification. The entity's letter must provide specific reasons why the decision to decertify is in error.

(3) The period of decertification may be up to 3 years, based upon the circumstances associated with the action.

(4) The entity may submit a new request for certification to NRCS only after the decertification period has expired.

§ 1468.27 Buy-Protect-Sell transactions.

(a) NRCS may enter into an ALE-agreement with an eligible entity for a buy-protect-sell transaction to provide cost-share assistance for the purchase of an agricultural land easement on eligible private or Tribal agricultural land that an eligible entity owns or is in the process of purchasing for the purposes of securing the long-term protection of natural resources and the agricultural nature of the land and ensuring timely transfer to a qualified farmer or rancher.

(b) At the time the individual parcel application is submitted, the eligible entity must identify the specific buy-protect-sell transaction type as either—

(1) Pre-closing transfer, wherein the eligible entity will transfer fee title ownership to a farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share, or

(2) Post-closing transfer, wherein the eligible entity will transfer fee title ownership to a farmer or rancher not later than 3 years after closing on the agricultural land easement, unless an extension of such time has been authorized by NRCS based on documentation of extenuating circumstances provided by the eligible entity.

(c) The ALE-agreement must contain the information described in § 1468.23

and must specify the details of the legal arrangement for the individual buy-protect-sell transaction, including that for all buy-protect-sell transactions the eligible entity must—

(1) Own the land or within 12 months of execution of the ALE-agreement for the buy-protect-sell transaction by both NRCS and the eligible entity, and the eligible entity has completed or has demonstrated to the satisfaction of NRCS that completion of the purchase of the land is imminent.

(2) Make an initial sale of the land to a farmer or rancher that is or will be subject to the agricultural land easement pursuant to the terms of the ALE-agreement.

(3) Sell the land to the farmer or rancher for a purchase price that does not exceed the lesser of—

(i) The original purchase price of the land paid by the eligible entity; or

(ii) The agricultural value as determined by an appraisal.

(4) Ensure that amounts included in the sale of the land to the farmer or rancher for reasonable holding and transaction costs incurred by the eligible entity in total do not exceed more than 10 percent of the agricultural value.

(5) Submit documentation satisfactory to NRCS that confirms the sale of the land that is or will be subject to the agricultural land easement meets the buy-protect-sell transaction requirements. Pursuant to the terms and conditions of the ALE-agreement for the buy-protect-sell transaction, the eligible entity must provide—

(i) Evidence that the purchaser of the land is a qualified farmer or rancher,

(ii) Documentation of the purchase price for the land paid by the eligible entity,

(iii) The appraisal used to determine the agricultural value of the land,

(iv) An itemized list of the allowable holding or transaction costs included in the sales price,

(v) A copy of the settlement statements identifying the sale price and all holding and transactions costs charged to the farmer or rancher purchaser, and

(vi) Other documents as specified by NRCS in the ALE-agreement.

(6) Reimburse NRCS for the entirety of the Federal share provided if, as determined by NRCS, the eligible entity failed to transfer ownership per the terms and conditions of the ALE-agreement for the buy-protect-sell transaction.

(d) In addition to the requirements identified in paragraph (c) of this section, for buy-protect-sell transactions that involve a pre-closing transfer as required by paragraph (b)(1) of this section:

(1) The maximum duration of the ALE-agreement may be the same as described in § 1468.23(b).

(2) The Federal share for the agricultural land easement will be provided on a reimbursable basis only, after the agricultural land easement has closed and the required documents have been provided to and reviewed by NRCS.

(e) For buy-protect-sell transactions that involve a post-closing transfer as required by paragraph (b)(2) of this section:

(1) At the time of application, in addition to the information identified § 1468.21, the eligible entity must provide NRCS specific information on the proposed structure of the buy-protect-sell transaction, including the parties to be involved in the transaction, the roles and responsibilities of each party related to the acquisition, holding, monitoring, and enforcement of the easement and the fee title ownership of the land, relevant State law that authorizes such transactions, proposed timeline, and other information identified by NRCS.

(2) NRCS will determine the legal conformance of the proposed arrangement for the buy-protect-sell transaction.

(3) Based on the NRCS determination of legal conformance of the proposed buy-protect-sell transaction, for eligible applications selected for funding based on ranking and availability of funds, NRCS will identify the specific terms of the ALE-agreement for the buy-protect-sell transaction.

(4) The buy-protect-sell transaction must meet the timing requirements in paragraphs (e)(4)(i) through (iv) of this section—

(i) The term of the ALE-agreement for a buy-protect-sell transaction will be for a period no longer than 5 fiscal years following the fiscal year of execution of the ALE-agreement by NRCS and the eligible entity.

(ii) The agricultural land easement must be closed within 2 fiscal years following the fiscal year of ALE-agreement execution, and the sale of the land subject to the agricultural land easement to a qualified farmer or rancher must occur within 3 years of closing on the agricultural land easement.

(iii) Prior to the expiration of the 3-year timeframe, the eligible entity may submit to NRCS a request for an extension that includes documentation of extenuating circumstances and the anticipated timeline, not to exceed 12 months, in which the sale of the land subject to the easement will occur.

(iv) NRCS may, in its discretion, authorize such additional time for the sale of the land subject to the agricultural land easement to a qualified farmer or rancher through a modification to the ALE-agreement.

§ 1468.28 Violations and remedies.

(a) In the event of a violation of the agricultural land easement terms, the agricultural land easement holder will notify the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.

(b) In the event that the agricultural land easement holder, or its successors or assigns, fails to enforce any of the terms of the agricultural land easement as determined by NRCS, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner and the agricultural land easement holder, reserves the right to enter upon the easement area if the annual monitoring report provided by the agricultural land easement holder documenting compliance with the agricultural land easement is insufficient or is not provided annually, the United States has a reasonable and articulable belief that the terms and conditions of the easement have been violated, or to remedy deficiencies or easement violations as it relates to the conservation plan in accordance with 7 CFR part 12.

(d) In the event of an emergency, the entry onto the easement area may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate, or mitigate a potential or unaddressed violation with notification to the landowner and the agricultural land easement holder provided at the earliest practicable time. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.

(e) The United States will be entitled to recover any and all costs from the eligible entity, or its successors or assigns, including attorney's fees or expenses, associated with any enforcement or remedial action as it

relates to the enforcement of the agricultural land easement.

(f) In instances where an easement is terminated, the proponent of the termination action must pay to CCC an amount determined by NRCS.

(g) If NRCS exercises its rights identified under an agricultural land easement NRCS will provide written notice to the agricultural land easement holder at their last-known address. The notice will set forth the nature of the noncompliance by the agricultural land easement holder, or its successors or assigns, and provide a 180-day period to cure. If the agricultural land easement holder fails to cure within the 180-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land that it seeks to protect.

Subpart C—Wetland Reserve Easements

§ 1468.30 Program requirements.

(a) *General.* (1) Under the ACEP–WRE, NRCS may purchase wetland reserve easements from eligible landowners who voluntarily cooperate to restore, protect, and enhance wetlands on eligible private or Tribal lands. A 30-year contract enrollment option is also available for acreage owned by Indian Tribes.

(2) To participate in ACEP–WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, manage, and monitor the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands.

(3) NRCS may provide financial assistance through an easement restoration agreement for the conservation practices and eligible activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values and associated habitats.

(4) For ACEP–WRE enrollments, NRCS may implement such conservation practices and eligible activities through an agreement with the landowner, a contract with a vendor, an interagency agreement, or a cooperative agreement. The specific restoration, protection, enhancement, maintenance, and management actions authorized by NRCS, may be undertaken by the landowner, NRCS, or its designee.

(5) The duration of a wetland reserve easement may be either perpetual, 30-years, or the maximum duration allowed by State law. The duration of a 30-year contract on acreage owned by Indian Tribes is 30 years.

(b) *Acreage limitations.* (1) No more than 25 percent of the total cropland in any county, as determined by the FSA, may be enrolled in CRP and ACEP–WRE, and no more than 15 percent of the total cropland in the county may be subject to an easement under ACEP–WRE.

(2) The limitations in paragraph (b)(1) of this section do not apply to areas devoted to windbreaks or shelterbelts after November 28, 1990, or to cropland designated by NRCS with ''subclass w'' in the land capability classes IV through VIII because of severe use limitations due to factors related to excess water such as poor soil drainage, wetness, high water table, soil saturation, or inundation.

(3) NRCS and the FSA will concur before a waiver of the 25-percent limit of paragraph (b)(1) of this section can be approved for an easement proposed for enrollment in ACEP–WRE. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* To be eligible to enroll in the ACEP–WRE, all landowners must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions at 7 CFR part 1400 and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Provide any documentation required by NRCS as necessary to determine eligibility; and

(3) For easement applications, have been the landowner of such land for the 24-month period prior to the time of application unless it is determined by NRCS that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner or pursuant to the terms of an existing trust,

(ii) The ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purposes of placing it in the program. Adequate assurances will include documentation that the change of ownership resulted from circumstances such as:

(A) The prior landowner owned the land for 2 years or more and transferred ownership amongst members of the immediate family (father, mother, spouse, children, grandparents, or grandchildren),

(B) A completion of a contract for deed entered into 24 months or more prior to the application date,

(C) The new landowner had leased the land for agricultural purposes for 24 months or more prior to the application date, or

(D) The easement area is a portion of a larger property where the majority portion was acquired for agriculture purposes.

(4) Agree to provide such information to NRCS as the agency deems necessary to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *New landowner.* When a parcel of land that has been accepted for enrollment into the ACEP–WRE is sold or transferred prior to NRCS purchase of the easement, NRCS will cancel the application or agreement to purchase and remove the acres from enrollment unless the new landowner meets the requirements of paragraph (c) of this section and accepts the terms and conditions of enrollment. The new landowner must submit required documentation for NRCS review and execute any required agreements or contracts. The decision to approve and execute an enrollment transferred prior to closing is at NRCS's discretion.

(e) *Land eligibility.* (1) Only private land or acreage owned by an Indian Tribe may be considered for enrollment into ACEP–WRE.

(2) NRCS will determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of such land and resultant wetland functions and values merit inclusion of such land in the program when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, management, and monitoring.

(3) Land will only be considered eligible for enrollment in the ACEP–WRE if NRCS determines that the enrollment of such land maximizes wildlife benefits and wetland function and values.

(4) To be determined eligible, NRCS must also determine that such land is—

(i) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the

wetlands, if such land is identified by NRCS as:

(A) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and agricultural lands substantially altered by flooding so as to develop and retain wetland functions and values; or

(B) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored; or

(C) Farmed wetland and adjoining land enrolled in CRP that has the highest wetland functions and values and is likely to return to production after the land leaves CRP; or

(D) A riparian area along a stream or other waterway that links, or after restoring the riparian area, will link wetlands protected by the ACEP–WRE easement, another easement, or other device or circumstance that achieves the same objectives as an ACEP–WRE easement.

(ii) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of—

(A) A closed basin lake, together with adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide a 50-percent share of the cost of the easement; or

(B) A pothole and adjacent land that is functionally dependent on it; and

(C) The size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(5) If land offered for enrollment is determined eligible under this section, then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land maximizes wildlife benefits and contributes significantly to wetland functions and values. Such adjacent or contiguous land may include buffer areas, created wetlands, noncropped natural wetlands, riparian areas that do not meet the requirements of paragraph (e)(4)(i)(D) of this section, and restored wetlands, but not more than NRCS, in consultation with the State technical committee, determines is necessary to maximize wildlife benefits and contribute significantly to wetland functions and values. NRCS will not enroll as eligible adjacent or contiguous land any constructed wetlands that treat wastewater or contaminated runoff.

(6) To be enrolled in the program, eligible land must have sufficient access and be configured in a size and with boundaries that allow for the efficient management and monitoring of the area for program purposes and otherwise promote and enhance program objectives as determined by NRCS.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled in ACEP–WRE only if the land and landowner meet the requirements of this part and the enrollment is requested by the landowner and agreed to by NRCS. To enroll in ACEP–WRE, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The land specified in paragraphs (g)(1) through (7) of this section is not eligible for enrollment in the ACEP–WRE:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land established to trees under the CRP, except in cases where the land meets all other WRE eligibility criteria, the established cover conforms to WRE restoration requirements and NRCS specifications, an active CRP contract will be terminated or otherwise modified upon purchase of the WRE easement, and any additional criteria NRCS uses to determine if enrollment of such lands would further the purposes of the program;

(3) Lands owned by the United States other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP–WRE;

(6) Lands where the purposes of the program or implementation of restoration practices would be undermined due to onsite or offsite conditions, including, but not limited to—

(i) Risk of hazardous materials or petroleum products either onsite or offsite;

(ii) Permitted or existing rights of way, either onsite or offsite, for infrastructure development;

(iii) Adjacent land uses, such as airports, that would either impede complete restoration or prevent wetland functions and values from being fully restored; or

(7) Land which NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient.

§ 1468.31 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an application to NRCS.

(b) *Preliminary agency action.* By filing an application, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values and for other activities, such as the ranking and development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in costs.* In order to enhance the probability of enrollment in ACEP–WRE, the landowner or someone other than the landowner may offer to contribute financially to the cost of the acquisition or restoration of the wetland reserve easement to leverage Federal funds. This offer must be made in writing to NRCS.

§ 1468.32 Establishing priorities, ranking consideration, and project selection.

(a) When evaluating easements or 30-year contract applications from landowners, NRCS, with advice from the State technical committee, may consider:

(1) The conservation benefits of obtaining an easement or other interest in the land, including but not limited to—

(i) Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including diversity of wildlife that will be benefitted or life-cycle needs that will be addressed;

(ii) Extent and use of habitat that will be restored for threatened, endangered, or other at-risk species or number of different at-risk species benefitted;

(iii) Protection or restoration of native vegetative communities;

(iv) Habitat diversity and complexity to be restored;

(v) Proximity and connectivity to other protected habitats;

(vi) Extent of beneficial adjacent land uses;

(vii) Proximity to impaired water bodies;

(viii) Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types;

(ix) Capacity of the wetland to improve water quality;

(x) Hydrology restoration potential, which must comprise at least 50 percent of the points for conservation benefits.

(2) The cost effectiveness of each easement;

(3) Whether the landowner or another person or entity is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of this part would be achieved on the land;

(5) The productivity of the land;

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities;

(7) Such other factors as NRCS determines are necessary to carry out the purposes of the program.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS will give priority to—

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wetland-dependent wildlife or improving water quality, in coordination with FWS at the local level, as may be appropriate.

(c) NRCS, in consultation with the State technical committee, may place higher priority on—

(1) Certain land types or geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives; and

(2) Land that is currently enrolled in CRP in a contract that is set to expire within 1 year from the date of application and is farmed wetland and adjoining land that has the highest wetland functions and values and is likely to return to production after the land leaves CRP.

(d) Notwithstanding any limitation of this part regarding priority ranking, NRCS may enroll eligible lands at any time to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. NRCS may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate.

§ 1468.33 Enrollment process.

(a) *Tentative selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in ACEP–WRE, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS's intent to continue the enrollment process on their land.

(c) *Acceptance and effect of offer of enrollment*—(1) *Wetland reserve easement.* For applications requesting enrollment through a wetland reserve easement, NRCS will present an agreement to purchase to the landowner which will describe the easement area, the easement compensation amount, the easement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The easement compensation amount will be based upon the lowest of the fair market value of the land, the geographic area rate cap, or the landowner offer, as provided in § 1468.34 of this part. The landowner accepts enrollment in the ACEP–WRE by signing the agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *30-year contract.* For applications requesting enrollment of acreage owned by an Indian Tribe through the 30-year contract option, NRCS will present an agreement to enter 30-year contract to the Tribal landowner which will describe the contract area, the contract compensation amount, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The Tribal landowner accepts enrollment in the ACEP–WRE by signing the agreement to enter 30-year contract. NRCS will proceed with implementation of the WRPO after the 30-year contract has been executed.

(d) *Restoration responsibility and the scope of enrollment.* (1) The agreement to purchase or agreement to enter 30-year contract is the enrollment document that establishes the terms of enrollment consistent with the terms and conditions of this part and identifies the—

(i) Scope of the agreement between NRCS and the landowner,

(ii) Basis for NRCS to obligate funds,

(iii) Nature and method through which NRCS will provide ACEP–WRE technical and financial assistance to the landowner, and

(iv) Withholding of the landowner's share of the restoration cost from the easement payment for applicable 30-year or nonpermanent easement or 30-year contract enrollments.

(2) The agreement to purchase between NRCS and the landowner under the easement option also constitutes the agreement for—

(i) Granting an easement on the enrolled land and sufficient access to the enrolled land as set forth under § 1468.37,

(ii) Implementing a WRPO which provides for the restoration, protection, and management of the wetland functions and values,

(iii) Recording the easement in accordance with applicable State law, and

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS and in accordance with Department of Justice Title Standards.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake on its own or through an agreement with the landowner or other third party, any activities to restore, protect, enhance, manage, maintain, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment.* Prior to execution of the easement deed or 30-year contract by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, insufficient access, sale of the land, risk of contamination from hazardous materials or petroleum products, or other reasons.

(f) *Landowner failure to accept enrollment offer in timely manner.* The offer of enrollment to the landowner will be void if not executed by the landowner within the time specified.

§ 1468.34 Compensation for easements and 30-year contracts.

(a) *Determination of easement compensation values.* (1) Compensation for an easement or 30-year contract under this part will be made in cash in such amount as is agreed to and specified in the agreement to purchase or agreement to enter 30-year contract and finalized in the warranty easement deed or 30-year contract.

(2) Payments for 30-year easements, nonpermanent easements as limited by State law, or 30-year contracts will be not more than 75 percent of that which

would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS will pay as compensation the lowest of the values from paragraphs (a)(3)(i) through (iii) of this section:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices or based on an area-wide market analysis or survey,

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section, or

(iii) A written offer made by the landowner.

(4) Each fiscal year NRCS, in consultation with the State technical committee, will establish one or more geographic area rate caps within a State. NRCS will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include soil types, types of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may be less than the fair market value of the interests and rights to be conveyed by the landowner under the easement.

(2)(i) For easements or 30-year contracts valued at $500,000 or less, NRCS will provide compensation in up to 10 annual payments, as requested by the participant, as specified in the agreement to purchase or 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than $500,000, NRCS may provide compensation in at least 5, but not more than 10 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the NRCS Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the agreement to purchase or 30-year contract, entered into between NRCS and the landowner.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse the landowner for fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as authorized and determined by NRCS.

(d) *Per-acre-basis-calculations.* If easement or 30-year contract compensation values are calculated on a per-acre basis, NRCS will identify an estimated amount in its agreement to purchase and the final easement or 30-year contract payment will be made based on final determination of value and acreage and specified in the warranty easement deed or 30-year contract.

§ 1468.35 Wetland Reserve Enhancement Partnerships.

(a) The purpose of the Wetland Reserve Enhancement Partnership (WREP) option is to target and leverage resources to address high priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, or Indian Tribes.

(b) NRCS will establish priorities for funding, required level of partner contribution of resources, ranking criteria, and other criteria. NRCS will prioritize proposals that address wetland restoration needs of national or regional importance, including special project or area-wide proposals.

(c) NRCS will make the information regarding WREP available to the public and potential partners.

(d) NRCS will evaluate proposals and make final funding selections based upon the priorities identified in the public notice of funding availability.

(e) NRCS will enter into WREP agreements with partners who have projects selected for funding.

§ 1468.36 WRPO payments.

(a) NRCS may provide financial assistance for implementing the WRPO on the enrolled land subject to an easement or 30-year contract. The amount and terms and conditions of the financial assistance will be subject to the restrictions in paragraphs (a)(1) and (2) of this section on the costs of establishing or installing conservation practices or eligible activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a 30-year or nonpermanent easement or 30-year contract, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs. The landowner's share of the WRPO implementation costs may be withheld from the easement or 30-year contract payment.

(b) Payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO.

(c) Payments may be made for repair or replacement of an eligible conservation practice or activity, if NRCS determines that the conservation practice or eligible activity is still needed and that the disrepair or failure of the original conservation practice or eligible activity was due to reasons beyond the control of the participant.

(d) A participant may seek additional assistance from other public or private organizations as long as the conservation practices or eligible activities funded are approved by NRCS and implemented in compliance with this part.

§ 1468.37 Easement and 30-year contract participation requirements.

(a) *Easement requirements.* (1) To enroll eligible land in ACEP–WRE through the permanent or 30-year easement option, a landowner will grant an easement to the United States. The easement will require that the easement area be maintained in accordance with ACEP–WRE goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, management, and monitoring of wetland and other land functions and values.

(2) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will cooperate in the restoration, protection, enhancement, maintenance, management, and monitoring of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement will grant to the United States:

(i) A sufficient right of legal access to the easement area,

(ii) The right to authorize compatible uses of the easement area, including but not limited to such activities as hunting and fishing, managed timber harvest, water management, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established,

(iii) All rights, title, and interest in the easement area except those rights specifically reserved in the deed, and

(iv) The right to restore, protect, enhance, maintain, manage, and monitor activities on the easement area.

(3) The landowner will convey title to the easement in a manner that is acceptable to NRCS. The landowner will warrant that the easement granted to the

United States is superior to the rights of all others, except for title exceptions deemed acceptable by NRCS.

(4) The participant will—

(i) Comply with the terms of the easement,

(ii) Comply with all terms and conditions of any related contract or agreement,

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area, as determined by FSA,

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, management, and monitoring of the easement in accordance with the terms of the easement and related agreements, and

(v) Agree that each person or legal entity that is subject to the easement will be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

(b) *30-year contract requirements.* (1) To enroll eligible land in ACEP–WRE through the 30-year contract option, a landowner will enter into a contract with NRCS. The contract will require that the enrolled area be maintained in accordance with ACEP–WRE goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, management, and monitoring of wetland and other land functions and values.

(2) For the duration of the 30-year contract, the contract will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, management, and monitoring of the land in accordance with the contract and with the terms of the WRPO. In addition, the 30-year contract will grant to NRCS:

(i) A sufficient right of legal access to the entire contract area for the duration of the contract,

(ii) The right to authorize compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, water management, or periodic haying or grazing if such use is consistent with the long-term protection and enhancement of the wetland resources for which the contract was established, and

(iii) The right to restore, protect, enhance, maintain, manage, and monitor activities on the enrolled area.

(3) The landowner will—

(i) Comply with the terms of the contract,

(ii) Comply with all terms and conditions of any associated agreement,

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, management, and monitoring of the enrolled area in accordance with the terms of the contract and related agreements, and

(iv) Agree that each person or legal entity that is subject to the contract will be jointly and severally responsible for compliance with the contract and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the contract or the provisions of this part.

(c) *Reservation of grazing rights.* (1) NRCS may include in the terms and conditions of an easement a provision under which the landowner reserves grazing rights if NRCS determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the wetland reserve easement or 30-year contract,

(ii) Is consistent with the historical natural uses of the land and long-term wetland restoration, protection, and enhancement goals for which the wetland reserve easement or 30-year contract was established,

(iii) Is subject to a recorded exhibit to the deed outlining grazing purposes and limitations, and

(iv) Complies with a WRPO developed by NRCS, which may include a grazing management plan component that is consistent with the WRPO and is reviewed and modified as necessary, at least every 5 years.

(2) Compensation for easements or 30-year contracts where the grazing rights are reserved under this section will be based on the method described in § 1468.34, except such compensation will be reduced by an amount equal to the value of the reserved grazing rights, as determined by NRCS.

§ 1468.38 Development and revision of the WRPO and associated compatible use authorizations.

(a) The WRPO will be developed and updated as determined by NRCS in consultation with the State technical committee and consideration of available site-specific technical input from FWS at the local level and others as appropriate.

(b) The WRPO will specify the manner in which the enrolled land will be restored, protected, enhanced, maintained, managed, and monitored to accomplish the goals of the program. The WRPO, and any revisions thereto, will be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result. Specifically, the WRPO will consider and address, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hydrology and associated wildlife, water quality, and wetland functions and values.

(c) The WRPO will identify the conservation practices and eligible activities needed to restore the functions and values on the enrolled land. NRCS may review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved. Revisions to the WRPO may result in the addition of conservation practices or eligible activities needed to enhance, maintain, manage, repair, replace or otherwise to protect the functions and values of the easement or 30-year contract area.

(d) As required by the terms of the easement deed as described in § 1468.37(a)(2)(ii) or 30-year contract as described in § 1468.37(b)(2)(ii), NRCS may, in its sole discretion, authorize the landowner to conduct compatible uses as defined in this part on the easement or contract area. Compatible use authorizations are time-limited and may be modified or rescinded at any time by NRCS. In evaluating and authorizing compatible uses of the easement or contract area, NRCS will—

(1) Consider whether the authorized use will facilitate the practical administration and management of the land subject to the easement or contract; and

(2) Ensure that the authorized use furthers the functions and values for which the easement or 30-year contract was enrolled.

§ 1468.39 Violations and remedies.

(a) *Easement violations.* (1) In the event of a violation of the easement involving the landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement or 30-year area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United

States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's failure to comply with easement obligations.

(3) If there is failure to comply with easement obligations, the easement will remain in effect, and NRCS may, in addition to any other remedy available to the United States, retain any payment otherwise required to be paid under this part and require the refund of any payment previously made under this part.

(b) *30-year contract or wetland reserve easement restoration agreements violations.* (1) If NRCS determines that a landowner is in violation of the terms of a 30-year contract or wetland reserve easement restoration agreement, or documents incorporated by reference into the 30-year contract or wetland reserve easement restoration agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation. If the violation continues, NRCS may terminate the 30-year contract or wetland reserve easement restoration agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 30-year contract or wetland reserve easement restoration agreement termination is effective immediately upon a determination by the NRCS that the landowner has—

(i) Submitted false information,

(ii) Filed a false claim, or

(iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part.

(3) If NRCS terminates a 30-year contract or wetland reserve easement restoration agreement, the landowner will forfeit all rights for future payments under the 30-year contract or wetland reserve easement restoration agreement, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

Matthew Lohr,

Chief, Natural Resources Conservation Service.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

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Part III

Department of Labor

Employment and Training Administration

20 CFR Parts 651, 652, 653, et al.

Wagner-Peyser Act Staffing Flexibility; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 651, 652, 653, and 658

[Docket No. ETA–2019–0004]

RIN 1205–AB87

Wagner-Peyser Act Staffing Flexibility

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department or DOL) is issuing this final rule to give States increased flexibility in their administration of Employment Service (ES) activities funded under the Wagner-Peyser Act (the Act). This flexibility includes the grants allocated to the States for the traditional labor exchange and related services, and for the foreign labor certification program, including the placement of employer job orders, inspection of housing for agricultural workers, and the administration of prevailing wage and practice surveys.

DATES: This final rule is effective February 5, 2020.

FOR FURTHER INFORMATION CONTACT: Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This final rule reflects changes made in response to public comments received on the Notice of Proposed Rulemaking (NPRM) that was published on June 24, 2019, at 84 FR 29433. The Department received many comments from the public, States, and advocates for Migrant and Seasonal Farmworker (MSFW) populations. The Department took into account these comments in reaching this final rule, and the changes made to the regulatory text are detailed below in the Department's responses to related comments.

The regulatory changes made in this final rule modernize the regulations implementing the Wagner-Peyser Act [1] to align them with the flexibility allowed under the Workforce Innovation and Opportunity Act (WIOA), and to allow States to choose the service delivery model that can best meet their goals for the ES program. This could include a focus on services for individuals with barriers to employment, improved employment opportunities for Unemployment Insurance (UI) recipients and other job seekers, better services for employers, and improved outreach to individuals in rural areas. The changes also give States the flexibility to staff employment and farmworker-outreach services in what each State finds is the most effective and efficient way, using a combination of State employees, local government employees, service providers, and other staffing models in a way that makes the most sense for them. This, in turn, may leave more resources to help employers find employees and to help employees find the work they need. The changes are also consistent with Executive Order (E.O.) 13777, which requires the Department to identify outdated, inefficient, unnecessary, or overly burdensome regulations that should be repealed, replaced, or modified.

The modifications made in this final rule require conforming amendments [2] to the specific Wagner-Peyser Act references in 20 CFR 678.630, 34 CFR 361.630, and 34 CFR 463.630 of the U.S. Departments of Labor and Education's joint WIOA regulations (Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions Final Rule, 81 FR 55792 (Aug. 19, 2016)). Neither this conforming change nor any of the changes discussed in this final rule will affect other programs' staffing requirements, such as those for the Vocational Rehabilitation (VR) program, because all changes discussed in this final rule, including these conforming changes, apply only to the ES programs authorized under the Wagner-Peyser Act which includes the Monitor Advocate System activities.

The Wagner-Peyser Act does not mandate specific staffing requirements. Section 3(a) of the Wagner-Peyser Act requires the U.S. Secretary of Labor (Secretary) to assist in coordinating the ES offices by developing and prescribing minimum standards of efficiency. Historically, the Department has used the authority in this provision to require States to provide labor exchange services with State merit staff, *i.e.* State staff employed according to the merit system principles in 5 CFR part 900, subpart F—Standards for a Merit System of Personnel Administration.[3] However, this is not the only reasonable interpretation of this provision and, in finalizing this rule, the Department is adopting an interpretation that allows States the flexibility to use staffing arrangements that best suit their needs. This flexibility will allow States to provide Wagner-Peyser Act services through State merit staff, other State staff, subawards to local governments or private entities, a combination of these arrangements, or other allowable staffing solutions under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Consistent with the Uniform Guidance, all of these staffing arrangements, other than using State-employee staff, would be considered subawards and the entities providing services would be considered subrecipients. The Department received comments on the NPRM asserting that the Department did not have the authority to provide this flexibility under the Wagner-Peyser Act. The Department has responded to those comments, and others, below.

This final rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

II. General Comments Received on the Notice of Proposed Rulemaking

The Wagner-Peyser Act Staffing Flexibility NPRM proposed changes to 20 CFR parts 651, 652, 653, and 658. The Department received 126 comments within the 30-day comment period. Of these, the Department received comments expressing general support for the changes proposed in the NPRM, as well as several comments expressing opposition to these changes. Additionally, the Department received one untimely comment that pertained to issues also raised by timely commenters. Some commenters requested the Department to extend the comment period, but after considering their requests, the Department determined that the original 30-day comment period provided adequate time for the public to comment on the proposed rule. The Department appreciates the input from all commenters.

Multiple commenters, including private individuals, local workforce

[1] This statute was originally titled the Act of June 6, 1933. Section 16 of the statute instructs that it may be called the Wagner-Peyser Act.

[2] Although this final rule requires that conforming amendments be made to 20 CFR 678.630, 34 CFR 361.630, and 34 CFR 463.630, these amendments are not contained in this final rule. DOL and the U.S. Department of Education will make these conforming amendments in a separate regulatory action.

[3] Throughout this rule the Department uses the term ''merit staff'' and similar phrases to refer to staff that are part of a merit personnel system that complies with 5 CFR part 900, subpart F.

development boards, and several States, supported the flexibility in the rule because, they stated, it would allow for staffing flexibility and that ''privatization,'' as some commenters characterized it, at the State and local levels would help agencies address local needs. Multiple commenters also supported the allowance for what they termed ''privatization'' as enabling the alignment of WIOA title I and ES staffing. One commenter agreed with the proposed rule's assessment that staffing flexibility could result in savings that could be reinvested elsewhere in ES activities. Another commenter wrote that, in the commenter's State, staffing flexibility could help integrate services and ensure that local job centers have sufficient onsite staff. Some commenters, including a local workforce development board, stated that Michigan has operated a pilot program that allocates funding to local workforce development boards, and that further flexibility would be beneficial. Some commenters supported the flexibility because, they wrote, the private sector would better provide employment services due to its adaptability to modern technologies and circumstances, including tracking job placements.

The Department appreciates these comments and agrees that staffing flexibility puts States in the best position to determine what is the most effective, efficient, and cost-effective way to provide the services under the Wagner-Peyser Act. The Department recognizes the value of the three State pilot projects, which provided important information on the use of alternative staffing models. With the staffing flexibility provided to the programs covered by this final rule, States will now have significant discretion and flexibility to tailor their service-delivery models to their local needs and circumstances.

Many commenters described this rule's new flexibilities for States as ''privatization.'' That is not an accurate term. This rule does not privatize Wagner-Peyser Act services. States retain responsibility to provide Wagner-Peyser Act services, and this rule provides flexibility to States to offer these services using the best staffing approach available to them.

Similarly, many commenters used the term ''contractors.'' As explained more fully below, the word ''contractor'' is a defined term under the Uniform Guidance, which governs how States can expend their Wagner-Peyser Act grant funds. To allay confusion, the Department has used the term ''contractor'' only where appropriate in this preamble, such as when describing the content of a comment.

Several commenters opposed the proposed staffing flexibility because, they wrote, the proposed rule lacks support demonstrating the effectiveness of non-merit-staffing alternatives for ES activities and claimed that available evidence indicates that merit-staffing is the most efficient way of staffing ES programs. In support of these views, several commenters referenced Jacobson et al., ''Evaluation of Labor Exchange Services in a One-Stop Delivery System Environment'' (2004),[4] as a study showing the benefits of maintaining a merit-staff-based ES program. According to several commenters, this study concludes that the demonstration States for alternative staffing models (Colorado, Massachusetts, and Michigan) did not improve ES operations compared to the merit-staffing model as studied in Oregon, North Carolina, and Washington. Several commenters stated that the study demonstrates that merit-staffing was highly cost-efficient.

The Department appreciates the comments citing the Jacobson study related to the Wagner-Peyser Act ES. However, the Department disagrees with the characterization of the study's results. In particular, the Department does not agree that the study found a strong correlation between merit-staffing and the study's conclusions, as the Jacobson study did not focus on merit-staffing.

The Jacobson study assessed how public labor exchanges funded under the Wagner-Peyser Act have evolved with the development of one-stop centers (also known as ''American Job Centers'' or ''AJCs''). Parts of the study compared the performance of ''traditional'' public labor exchanges, which maintained State-level control of ES programs, with ''non-traditional'' public labor exchanges, which devolved control of ES programs to local or county governments. The study identified three States that modified their public exchange structure substantially by devolving State control and staffing to local areas (Jacobson et al., 101–08). Colorado devolved responsibility for ES activity to the counties through workforce development boards (called workforce investment boards at the time), while one-stop centers in Michigan were run by a mix of State and local government agencies. Only one of the States (Massachusetts) ultimately permitted individual workforce development boards to opt out of the traditional State-run public labor exchange system and devolve service delivery to local government, non-profit, or for-profit entities. See Jacobson et al, at 45–46. The limited findings—which did not specifically focus on merit-staffing—should not be used to draw conclusions regarding merit-staffing systems nationwide.

The study concluded that in the States evaluated, State-controlled one-stop centers helped many UI claimants rapidly return to work; however, one-stop centers controlled by non-State entities tended to focus on serving economically disadvantaged populations, tailored job listings to the specific skills of those in most need, and effectively used the case management approach to service.

It is also important to note that this study evaluated service delivery under the Workforce Investment Act (WIA). Its successor, WIOA, made significant reforms to the federally funded workforce development programs and provides States greater flexibility to achieve their goals, making the study less relevant to the current rulemaking than suggested by the commenters.

The Jacobson study can be informative when viewed holistically. One of the goals of providing staffing flexibility is to give States more options in designing their workforce development systems, including the ES program, to more closely align with other WIOA partner programs. The results of this study show that it is possible to more closely align services provided by the ES program with WIOA's focus on serving individuals with barriers to employment, which is a key goal of this rulemaking. While the Department acknowledges the commenters' concerns about whether particular staffing arrangements would be optimal in any individual State, the Department considers States to be in the best position to determine whether to implement the staffing flexibility provided in this regulation. States are able to determine the most effective, efficient, and cost-effective way to provide the services under the Wagner-Peyser Act.

Several commenters referenced a 2012 study from Michaelides et al., ''Impact of the Reemployment and Eligibility Assessment (REA) Initiative in Nevada,'' as an additional study showing the benefits of maintaining a merit-staff-

[4] Louis Jacobson, Ian Petta, Amy Shimshak, and Regina Yudd, ''Evaluation of Labor Exchange Services in a One-Stop Delivery System Environment,'' prepared by Westat for the U.S. Department of Labor, Employment and Training Administration Occasional Paper 2004–09 (Feb. 2004).

based ES program.[5] According to commenters, this study found that, in the Reemployment and Eligibility Assessment (REA) evaluation in Nevada, the merit-staffed REA program led to UI claimants collecting fewer benefits. The Department recognizes the value of evaluations and encourages States to consider any relevant research or to conduct their own evaluations or pilot projects to best determine their staffing approaches.

The objective of the Michaelides et al. study was to address specific questions related to the efficacy of the Nevada REA program, including whether REA reduced UI benefit duration and benefit amounts received, whether it expedited reemployment of UI claimants, and whether REA led to UI Trust Fund savings exceeding REA program costs. The study was not measuring the efficacy of merit staff delivering the services. While State merit staff provided the services analyzed in the study, the study did not specifically look at the staffing model, but rather it evaluated the services provided. The study never analyzed or determined whether the positive results were attributable to State merit-staffed employees providing the services. Therefore, the study's findings cannot be viewed as illustrative of the relative benefits of merit-staffing for this rulemaking.

The Department notes that this regulation does not require States to change their staffing structure for providing services under the Wagner-Peyser Act, but rather it provides much needed flexibility in developing their staffing structure to staff these services. The Department considers States to be in the best position to determine whether to implement the staffing flexibility provided in this regulation. States may review this and other studies in making such a decision. States are able to determine the most effective, efficient, and cost-effective way to provide the services under the Wagner-Peyser Act.

Two commenters recommended the Department conduct an independent assessment showing the effectiveness of alternative staffing models before implementing the rule. The Department recognizes the value of evaluations in helping States determine the most effective, efficient, and cost-effective way to provide ES activities and encourages States to consider all available data in determining their staffing strategies.

For example, there is no merit-staffing requirement in the WIOA title I Adult and Dislocated Worker programs. As explained in the NPRM, when crafting this flexibility, the Department considered the results and outcomes for WIOA title I programs, which do not have a merit-staffing requirement, to show that career services, including labor exchange services, can be provided effectively through non-merit staff employees.

The Department sponsored the Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation, which found that intensive services (now called individualized career services under WIOA) were an effective service intervention for job seekers. States can use their ES funds to provide individualized career services, similar to the ones evaluated in this study. Therefore, the Department has concluded that it is not necessary to have State merit-staffing to provide effective ES activities.

The Department considers States to be in the best position to determine whether to implement the staffing flexibility provided in this regulation. The Department encourages States to consider any relevant research or to conduct their own evaluations or pilot projects when determining whether to implement the staffing flexibility provided for in this regulation. It should be noted that the Department was not and is not required to conduct the assessment suggested by the commenter.

Several commenters stated that the NPRM failed to describe the contracting process and would leave ES open to potential conflicts of interest. The Department makes grants to the States to carry out the Wagner-Peyser Act requirements, making the States the Department's grantees. The Department and the States are subject to the Uniform Guidance at 2 CFR part 200, as well as the Department's implementing regulations at 2 CFR part 2900. If a State determines it will use the flexibility offered by this final rule to obtain a service provider to deliver the State's ES activities, this service provider will be characterized as a subrecipient, as defined in 2 CFR 200.93, under the Uniform Guidance. See 2 CFR 200.330. This makes the agreement between the State and the service provider to deliver Wagner-Peyser Act activities a subaward. See 2 CFR 200.92. While States have the flexibility to characterize their agreements with any ES providers as ''contracts,'' the service provider cannot be considered a contractor as that term is defined and used in the Uniform Guidance, as the service provider does not have the characteristics of a contractor described in 2 CFR 200.330(b). See also 2 CFR 200.22. Because the Wagner-Peyser Act service provider will be a subrecipient, the service provider will be subject to the requirements of the Uniform Guidance, including the financial and program management, monitoring, and cost principle requirements.

The Uniform Guidance does not impose any particular process or procedure States must use when making a subaward to a subrecipient. Therefore, to give the States the maximum flexibility in choosing the staffing method that is the most efficient for each State, the Department declines, at this time, to prescribe a particular process or procedure that States must use in determining who will provide ES activities in the State.

The Department does not agree that the staffing flexibility would leave the ES open to potential conflicts of interest. 2 CFR 200.112 requires the Department to establish conflict of interest policies for the use of Wagner-Peyser Act grant funds. Consistent with this requirement, the Department promulgated 20 CFR 683.200(c)(5)(iii), which governs ES activities and requires States to disclose any potential conflicts of interest to the Department and the State's subrecipients to disclose any potential conflicts of interest to the State. 20 CFR 683.200(c)(5)(iii) requires that States, as Federal award recipients, disclose in writing any potential conflict of interest to the Department. The Department considers potential conflicts of interest to include conflicts of interest that are real, apparent, or organizational. Therefore, whether or not a State uses the flexibility in this final rule to provide ES activities, the State and its subrecipients will be required to disclose potential conflicts of interest.

The Department also notes that, consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900. This will include monitoring to ensure States are complying with all applicable requirements on conflicts of interest.

Some commenters opposed the rule, contending that a private entity would be less likely to provide assistance to rural areas and customers who are less comfortable with technology, noting the time and investment that staff need to devote to these job seekers and employers. One commenter stated that a

[5] Marios Michaelides, Eileen Poe-Yamagata, Jacob Benus, and Dharmendra Tirumalasetti, ''Impact of the Reemployment and Eligibility Assessment (REA) Initiative in Nevada,'' prepared by IMPAQ for the U.S. Department of Labor (Jan. 2012).

private entity would be less willing to devote that time because the profit incentives would dictate their service delivery strategy.

The Department appreciates the commenter's concern regarding access for job seekers in rural areas and those customers with technological barriers. Under this regulation, States will be given the flexibility to select the best service delivery strategy to meet their unique needs and requirements, including the needs of a State's rural residents and residents with technological barriers. The Department does not agree that job seekers in rural areas and those with technological barriers would necessarily receive worse services if a State takes advantage of the staffing flexibility provided in this final rule. The ES program is a universal access program requiring certain services be available to all employers and job seekers, which includes the customers identified by the commenter. States, even if they take advantage of staffing flexibility, still must meet the universal access requirement found at 20 CFR 652.207.

Additionally, the Department notes there is no evidence that State merit staff are better suited to serving rural areas or specific populations than others. Notably, many local areas are wholly or partly located in rural areas and deliver WIOA title I-funded career services to a range of job seekers under a variety of staffing models; the Department anticipates States would adopt similar strategies for ES activities. Additionally, the Department notes that States have the flexibility to structure their agreements with their Wagner-Peyser Act service providers in a way that ensures all job seekers and employers receive effective services from the ES program.

Regarding the commenter's concern that private entities would be less motivated to serve rural areas and individuals who require more time or assistance because of a profit motive, the Department does not agree that private entities necessarily will be less willing to provide quality services to individuals who may require more time. States have flexibility to create agreements with their ES service providers that encourage serving those who may have technological barriers, may need additional time or assistance, or who live in rural areas. States are ultimately accountable for ensuring universal access to all job seekers, including those in rural areas and those who require more time and assistance.

States are required to oversee all operations of the Wagner-Peyser Act in their States, whether or not they ultimately decide to exercise this final rule's staffing flexibility, and States are still subject to Federal monitoring under 20 CFR part 683, subpart D—Oversight and Resolution of Findings. Consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900.

Some commenters stated that a uniform, federally mandated service delivery-staffing model helps prevent inconsistency in service delivery. The Department has concluded that a uniform staffing model does not necessarily ensure consistency of services, and the Department encourages States to establish policies on service delivery to improve quality and consistency regardless of staffing model. The Department notes that, regardless of how States staff their ES program, they are still obligated to provide all of the services the Wagner-Peyser Act requires and uniformity of service is still ensured by other Wagner-Peyser Act rules found in 20 CFR parts 651, 652, 653, and 658. For example, 20 CFR 652.3 establishes minimum requirements for public labor exchange systems and 20 CFR 653.101 establishes minimum requirements for the provision of services to MSFWs. Additionally, the ES program is a mandatory one-stop partner program, and consistency across service locations is supported by the one-stop center certification requirements in the WIOA regulations at 20 CFR 678.800.

In addition, States, as Wagner-Peyser Act grantees, are still required to oversee all operations of the Wagner-Peyser Act, regardless of whether or not they ultimately decide to take advantage of the staffing flexibility provided by this final rule. Consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900.

Some commenters stated that private entities would provide inferior service because they are motivated by profit, rather than service. A commenter cited instances of communications challenges with participants served by some contractors in non-DOL administered programs. Some stated that, for example, as a result of profit or outcome incentives, ''privatization efforts,'' as described by the commenter, could result in ''contractors'' referring only the most employable workers to employers, which could lead to poorer employment outcomes for individuals with the highest barriers to employment. One commenter added that the proposed rule would have a disproportionate, adverse impact on Black and Hispanic workers. Another commenter stated that publicly administered public services reduce inequality.

The Department appreciates the concerns of commenters and agrees that the quality of services is important. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. States, working with local workforce development boards as appropriate, must ensure that proper policies and processes are in place to deter inadequate communication and services and that the workforce system continues to provide effective and meaningful services to all participants. Regarding the commenter's concern about private entities being motivated by profit and thus not willing to provide services to those individuals with barriers to employment, the Department notes that there is flexibility in how States can structure their agreements with their service providers. Included is the ability to align the goals of the agreement with the goals of the Wagner-Peyser Act, including serving UI claimants, dislocated workers, MSFWs, and other individuals with barriers to employment.

The Department disagrees that staffing flexibility would result in adverse impact on Black and Hispanic workers. Staffing flexibility may allow local organizations, closer to the communities in which job seekers live, to deliver culturally competent services to a local community instead of workers managed by a central State office. Rather than negatively affecting services to these communities, this final rule will permit States to provide more tailored staffing models to address the needs of these unique communities, as needed.

The Department notes that States, as Wagner-Peyser Act grantees, are required to oversee all operations of the Wagner-Peyser Act, whether or not they ultimately decide to exercise this final rule's staffing flexibility. This includes ensuring that the State is meeting the universal access requirements of the Wagner-Peyser Act in 20 CFR 652.207, which ensures services are available to all workers and not just the most employable ones. The Department also notes that the non-discrimination requirements of WIOA sec. 188 apply to the services provided under the Wagner-Peyser Act regardless of the staffing model a State may choose to implement.

Consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States and their subrecipients are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900.

A commenter stated that public employment offices belong in the public sphere because they provide employment services without fees and on an impartial basis, and that the proposal threatens the unbiased nature of ES referrals and remove public employees from the actual offices (especially given that UI employees often work off-site in call centers). The commenter expressed concern that if a ''contractor'' were providing ES activities, the contractor would charge a fee and may jeopardize unbiased referrals.

This final rule gives States flexibility to staff ES programs in a manner they believe is best tailored to meet the unique needs of the workers who will use the services. The Department does not share the commenter's concerns. The Wagner-Peyser Act program is a universal access program requiring that labor exchange services be available to all employers and job seekers, per 20 CFR 652.207. Such fees would not be permissible and a service provider could not charge a fee for offering ES activities. Additionally, 20 CFR 678.440(b) prohibits charging a fee to employers for career services, specifically labor exchange activities and labor market information, which are the primary services under the Wagner-Peyser Act.

The Department notes that it has been permissible for non-merit staff to carry out similar functions, such as reviewing compliance with State work search requirements, for example, as part of the REA program for many years. The Department recognizes the importance of the connection between the UI and Wagner-Peyser Act programs, and considers the flexibility this regulation provides to States as an opportunity for States to test and improve strategies for serving unemployed individuals.

Some commenters opposed the staffing flexibility in the proposed rule because they stated that ''privatization,'' as termed by the commenter, is inefficient, citing Supplemental Nutrition Assistance Program (SNAP) efforts in Texas and Indiana. One commenter likewise opposed the staffing flexibility in the proposed rule, arguing that ''privatization'' of services within Temporary Assistance for Needy Families (TANF) in Wisconsin resulted in poorer services for the public, with ''contractors'' retaining a substantial amount of their budget rather than using it to provide services. While the Department appreciates commenters' concerns over potential inefficiencies that could arise if States adopt the additional flexibility in this final rule, the Department notes that SNAP and TANF are different programs with different statutory and regulatory requirements. States considering using this final rule's staffing flexibility are encouraged to consider the range of experiences other programs have had, including those noted in relevant research, or to conduct their own evaluations or pilot projects. States can also use lessons learned from other efforts as they decide whether to use the staffing flexibility in this final rule.

Regardless of how States choose to provide ES activities, they are still Wagner-Peyser Act grantees, so they must oversee all operations of the Wagner-Peyser Act activities and are still subject to 20 CFR part 683, subpart D—Oversight and Resolution of Findings. Consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900. The Department will hold States responsible for violations of the ES implementing regulations, the statute, and the Uniform Guidance.

Some commenters were concerned that allowing the flexibility in staffing provided under this final rule, which they characterized as privatization, would result in overall cost increases, as UI programs require merit-staffing and often rely on ES staff in performing their functions. A commenter likewise stated that providing services through the use of what they termed private contracts would harm Trade Adjustment Assistance (TAA) and veterans' programs that currently require merit-staffing and benefit from being able to draw on ES resources. Some commenters also stated that merit-staffing allows for the efficient management and protection of a claimant's UI information, benefit delivery, and job search. Some commenters stated that changing ES staff would change the ''public face'' of UI programs, undermining public trust in the organization. The Department has determined States are in the best position to determine what funding and staffing structure is the most efficient and effective for their programs, as States are most familiar with their own particular needs. The Department encourages States to consider costs when determining whether they will use the staffing flexibility provided in this final rule.

The Department notes that this final rule does not change the merit-staffing requirement in the UI program. Additionally, nothing in this final rule changes UI requirements related to a claimant's UI information, benefit delivery, and job search. States wishing to use this final rule's flexibility for the provision of ES activities will need to consider how to ensure the State remains in compliance with all UI requirements.

The Department appreciates the considerations that States need to take into account, such as the effects on partner programs, when deciding whether to use this final rule's staffing flexibility. States, as Wagner-Peyser Act grantees, are still required to oversee all operations of the Wagner-Peyser Act whether or not they ultimately decide to use this final rule's staffing flexibility.

One commenter stated that ''privatization introduces new data security issues'' because of the differing security standards at private companies, the risk that such companies may attempt to monetize confidential information, and the possibility of disgruntled ''contractors'' misusing confidential information. Another commenter provided an example of a disgruntled contractor misusing confidential information. Similarly, a different commenter agreed that the proposal could reduce information security.

The Department appreciates the considerations, such as data security, that States need to take into account when deciding whether to take advantage of this final rule's staffing flexibility. States are required to comply with all applicable data confidentiality restrictions, such as those found at 20 CFR 683.220 and 2 CFR 200.303(e). 20 CFR 683.220(a) requires States to have an internal control structure and written policies that provide safeguards to protect personally identifiable information. In considering whether to use a service provider to deliver ES activities, States must consider any implications using a service provider will have on these policies. Likewise, 2 CFR 200.303(e) requires States to take reasonable measures to safeguard protected personally identifiable information and States must consider how a service provider will comply with this requirement when determining if it would be appropriate to take advantage of this final rule's staffing flexibility for providing ES activities. As appropriate, the Department will continue to provide guidance of the specific requirements

grantees must follow pertaining to the acquisition, handling, and transmission of personally identifiable information.

One commenter opposed the staffing flexibility in the proposed rule because, the commenter stated, agreements for ''bureaucratic functions'' require such long terms that they lose the competitiveness necessary to drive down costs. The Department appreciates the considerations that States need to take into account when deciding whether to exercise staffing flexibility under the Wagner-Peyser Act, including the structure of the agreement, duration, costs, and services. The Department does not agree with the commenter that there will be no cost savings associated with staffing flexibility for providing ES activities. As explained in the economic analysis accompanying the NPRM and this final rule, the Department has concluded that there will be cost savings. Moreover, the Department considers States to be in the best position to determine the appropriateness of adopting the staffing flexibility for ES activities and whether the flexibility will drive down costs.

One commenter opposed the flexibility in the proposed rule because the commenter stated that the NPRM failed to explain how ''contractors'' could fulfill the essential functions of the Wagner-Peyser Act's accountability, fiscal control, and operational responsibilities. The Department appreciates the considerations that States need to take into account when deciding whether to take advantage of the staffing flexibility under the Wagner-Peyser Act the Department is providing. The Department did not include in the NPRM nor in this final rule prescriptive requirements regarding how a service provider could fulfill these requirements. States are in the best position to determine whether a service provider could meet these obligations, and this rule is intended to encourage innovative and flexible approaches to service delivery, customized to the unique populations each State serves and each State knows best. Overly specific requirements on State-level service providers would disserve those important policy goals. The Department notes, however, that even if a State chooses to use a service provider to deliver these services, States, as the Wagner-Peyser Act grantees, are required to provide all of the services under the Wagner-Peyser Act consistent with the accountability, fiscal control, and operational responsibilities dictated by the Act, its implementing regulations, including 20 CFR 683.200, and the Uniform Guidance. A State using a service provider to deliver ES activities will have to ensure as part of its obligations that these requirements are being met.

One commenter stated that WIOA title I programs should not be used to judge the efficacy of what the commenter termed ''privatization'' of Wagner-Peyser Act services, as the ES serves more customers and at a lower cost per customer. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. The Department acknowledges that the ES has a lower ''cost per participant'' than the WIOA title I programs; however, the programs deliver a different set of services. Further, the Department does not consider cost per participant to be the only relevant factor in determining program efficacy. An important factor the Department considered and discussed in the NPRM is the performance indicators for the Wagner-Peyser Act as required under WIOA sec. 116. As part of its justification for proposing staffing flexibility, the Department noted that when isolating similar services provided by the Wagner-Peyser Act and the WIOA Adult and Dislocated Worker programs, the outcomes on those performance indicators were comparable. Cost per participant is one of the factors a State may use when determining whether it is efficacious to use different staffing models for Wagner-Peyser Act services, but, for reasons stated in the NPRM, the Department reiterates that the comparison to the WIOA title I Adult and Dislocated Worker programs is appropriate.

The Department received several comments recommending the Department consider the average cost per participant data of the Wagner-Peyser Act services compared to the WIOA Dislocated Worker program as part of its economic analysis.

The Department recognizes the value of average cost per participant data and anticipates that States will consider this information when determining the most cost-effective approach to delivering ES activities. In the economic analysis, the Department did not compare the average cost per participant receiving Wagner-Peyser Act services to the average cost per participant receiving WIOA Dislocated Worker services due to the differences between the two programs. As part of its justification for merit-staffing flexibility, the Department noted that when isolating similar services provided by the Wagner-Peyser Act and the WIOA Adult and Dislocated Worker programs, the outcomes were similar. However, the cost of the totality of services available in the Dislocated Worker program cannot be usefully compared to the cost of the totality of services available through the Wagner-Peyser Act. The Dislocated Worker program provides more comprehensive services, such as individualized career services and training services, which cost more individually than Wagner-Peyser Act-funded services cost collectively. Therefore, the Department does not include these Dislocated Worker program services in its economic analysis of the rule.

Another commenter stated that, because the allotments to States under the Wagner-Peyser Act are often less than their WIOA title I allotments and the outcomes are similar, if cost savings are the goal, the Department should require that WIOA title I services be provided by merit staff. The Department declines this suggestion because it is outside the scope of this rulemaking. This rulemaking is focused specifically on Wagner-Peyser Act services, not WIOA title I services. Further, as explained in the NPRM, cost savings are not the only goal under this rulemaking. The Department laid out several other goals in providing staffing flexibility, including aligning the provision of Wagner-Peyser Act services and activities with WIOA's service delivery model so the programs work better together and allowing maximum flexibility to States to encourage innovative and creative approaches to deliver employment services with limited resources.

The Department notes that as part of the explanation for staffing flexibility in the NPRM, the Department explained that when isolating similar services provided by the Wagner-Peyser Act and the WIOA Adult and Dislocated Worker programs, the outcomes on the primary indicators of performance were comparable. However, it is not appropriate to compare the cost of the totality of services provided in the title I programs with the cost of the services available through the Wagner-Peyser Act, in part because the WIOA title I Adult and Dislocated Worker programs provides more comprehensive services, such as individualized career services, as well as training services. Therefore, contrary to what the commenter suggested, this was not part of the justification for staffing flexibility in the ES program.

One commenter opposed the proposed staffing flexibility because they stated that ''privatization,'' as termed by the commenter, would reduce accountability and transparency. This rule does not privatize Wagner-Peyser

Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. The Department does not agree that staffing flexibility necessarily would reduce accountability or transparency. For example, a State may find it easier to hold an individual service provider accountable for performance than a State agency. Additionally, States can design agreements with service providers to require accountability and information reporting resulting in increased accountability and transparency. The Department notes that States, as Wagner-Peyser Act grantees, are still required to oversee all operations of the Wagner-Peyser Act whether or not they ultimately decide to use the staffing flexibility provided by this final rule. States will be responsible for holding their service providers accountable for the delivery of services under the Wagner-Peyser Act consistent with their responsibilities found in 20 CFR part 683, subparts B (Administrative Rules, Costs, and Limitations) and D (Oversight and Resolution of Findings). Further, consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900.

One commenter opposed the staffing flexibility proposed in the rule, stating that State employees are more efficient than their private counterparts and mentioning greater accountability of the former and costlier overhead for the latter. Other commenters opposed the staffing flexibility proposed in the rule because they stated that any possible cost-savings would be outweighed by the costs of contract training and oversight. The Department appreciates the considerations that States need to take into account when deciding whether to use the staffing flexibility under the Wagner-Peyser Act. The Department recognizes that there may be administrative costs associated with obtaining a service provider to deliver ES activities. However, the Department has determined there could be a reduction in costs due to the diminished need for management and oversight of State employees. States should consider any additional costs that may result from obtaining a service provider, as well as cost savings, when determining the appropriate staffing model for their State. Regardless of how States staff the ES program, the Wagner-Peyser Act requires grantee States to oversee all operations of the Wagner-Peyser Act.

One commenter opposed the proposed rule because, in the commenter's view, it would increase the risk of conflicts of interest and violations of lobbying and ethical rules. Conversely, another commenter stated that the proposed rule could reduce conflicts of interest by separating the service provision functions from the oversight functions at the State level. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. The Department appreciates the considerations that States need to take into account when deciding whether to use the staffing flexibility this final rule provides for delivering services under the Wagner-Peyser Act. The Department does not agree that staffing flexibility necessarily increases the risk of conflicts of interest and violations of lobbying and ethical rules as States will still be bound to follow the same requirements they currently follow. For example, 20 CFR 683.200(e) imposes restrictions on lobbying using Wagner-Peyser Act funds and paragraph (c)(5) of this section requires disclosures of conflict of interest. The Uniform Guidance, which States are required to follow, also imposes restrictions on using Wagner-Peyser Act funds for lobbying. See 2 CFR 200.450.

The Department notes that States, as Wagner-Peyser Act grantees, are still required to oversee all operations of the Wagner-Peyser Act whether they ultimately decide to use a service provider to staff these services or not. Further, consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900.

Some commenters stated that non-merit-staffing would result in political, corrupt, and/or nepotistic employment decisions. The Department appreciates the commenters' concerns regarding corruption and/or nepotistic employment decisions, and it works to ensure such acts do not take place in DOL-funded grant programs, regardless of the staffing model in place. The Department appreciates the considerations that States need to take into account when deciding whether to exercise staffing flexibility under the Wagner-Peyser Act and how they structure their agreements and conduct oversight to prevent corruption or nepotism. The Department expects States—both those that continue to use merit staff and those that do not—to have policies and internal controls in place that prevent corruption or nepotism. Further, consistent with 20 CFR 683.400, the Department will continue to conduct monitoring to ensure States are complying with all of the requirements of the Wagner-Peyser Act, its implementing regulations, and 2 CFR parts 200 and 2900. As explained above, the Department anticipates that conflict-of-interest disclosure requirements will help guard against the kind of corruption and nepotism the commenter mentioned.

One commenter opposed the staffing flexibility proposed in the rule, stating that public employees tend to be more knowledgeable and have more experience than ''contractor'' who lack expertise and have additional costs associated with bidding on contracts. Likewise, other commenters stated that allowing the proposed staffing flexibility could dismantle current infrastructure and relationships between State merit staff currently carrying out the Wagner-Peyser Act and other service providers, other agencies, and employers. One commenter stated that the diminished competency of the ES would undermine the public's trust in the program.

Commenters argued that contracting or privatizing (as they termed it) the ES would be inefficient because it would cause turnover and loss of institutional knowledge. Commenters mentioned specific areas of expertise that require substantial time and dedication to master, such as the TAA program and the State-specific case-management system. Another commenter added that, as a result of ''contractor'' turnover, service procedure can change, confusing job seekers. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. The Department appreciates the considerations that States need to take into account when deciding whether to exercise the staffing flexibility under the Wagner-Peyser Act. States should consider any impacts to service quality, impacts on partner programs, and staffing turnover that may result from their decision, as well as consider establishing policies and oversight functions that ensure service quality and partner program relationships regardless of the staffing model chosen. States, as Wagner-Peyser Act grantees, are still required to oversee all

operations of the Wagner-Peyser Act, regardless of the staffing model chosen.

Other commenters expressed concern about how the proposal could affect MSFWs and outreach services specifically. One commenter recommended that the Department consider National Farmworker Jobs Program (NFJP) grantees as partners for MSFW outreach. One commenter stated that changes in outreach staffing requirements would disrupt beneficial relationships and lead to a reduction in reporting on employment law violations. The commenter further stated that the proposal could harm MSFWs by diminishing the status and responsibilities of the Monitor Advocate System, sending a message that MSFW rights are not a priority. Finally, some commenters stated that providing ES to MSFWs is a very complicated task, and is becoming more so. The commenters described increasingly complicated job postings, requirements of matching such postings against Wagner-Peyser Act and H–2A criteria, and migrant housing regulations. The commenters stated that the proposal would reduce the experience of ES staff and thus their ability to perform their duties. The Department acknowledges that there may be distinct effects of staffing flexibility on the Monitor Advocate System. In response to the recommendation that the Department consider NFJP grantees as partners for MSFW outreach, the Department notes the requirement at § 653.108(k) for the State Monitor Advocate (SMA) to establish an ongoing liaison with NFJP grantees, in addition to the requirement at § 653.108(l) to establish a Memorandum of Understanding (MOU) with NFJP grantees. The staffing flexibility does not change these requirements and States still must establish this relationship.

Additionally, the NFJP grantees are a required partner of the one-stop delivery system, which requires States to provide access to those services at one-stop centers in the local areas where the NFJP program is carried out. The Department encourages State Workforce Agencies (SWAs) to coordinate outreach with NFJP grantees, but notes that outreach to NFJP grantees alone is not a substitute for the SWAs' required outreach obligations pursuant to 20 CFR 653.107. However, under this final rule, States can consider the outreach staffing option that works best for them, which may include having NFJP grantees be subrecipients of the Wagner-Peyser Act funds and provide ES activities, including outreach activities.

In response to the commenter who maintained that staffing flexibility could lead to disruptions in beneficial relationships and a decrease in reporting employment-related law violations, the Department notes that it is the choice of the State whether to use the staffing flexibility. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. If the State chooses to adopt staffing flexibility, the State, as the Wagner-Peyser Act grantee, is still required to oversee all operations of the Wagner-Peyser Act activities, including oversight to avoid any disruptions in service. In regards to a potential decrease in reporting violations, regardless of the staffing method used, the new staff must be trained pursuant to 20 CFR 653.107(b)(7), which includes training on protections afforded to MSFWs, and training on sexual harassment and human trafficking awareness. These trainings are intended to help outreach workers identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies.

Lastly, SWAs must continue to comply with 20 CFR 653.107(b)(6), which requires outreach workers to be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, to document and refer information to the ES Office Manager for processing. If an outreach worker observes or receives information about apparent violations, the outreach worker must document and refer the information to the appropriate ES Office Manager. These requirements remain in effect and nothing in this final rule changes these State obligations.

In response to the statement that the rulemaking could harm MSFWs by diminishing the status and responsibilities of the Monitor Advocate System, sending a message that MSFW rights are not a priority, the Department makes clear in this preamble that the Monitor Advocate System continues to be a priority for the Department to ensure farmworkers receive equal access to resources and protections. Similarly, across all titles, WIOA focuses on serving individuals with barriers to employment, which includes eligible MSFWs as defined in WIOA sec. 167(i)(1) through (3). Staffing flexibility is an option afforded to States; however, States will continue to be required to carry out the duties set forth in the ES regulations and to provide services to farmworkers on a basis that is qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. As part of the Monitor Advocate System, the States will continue to provide an SMA to ensure MSFWs are being provided the full range of employment and training services through the one-stop delivery system, as well as outreach staff to provide information to MSFWs on this system.

In response to the concerns that staffing flexibility would reduce the experience of ES staff and thus their ability to perform their duties, the Department reiterates that States may choose to maintain merit staff, and notes that turnover can and has occurred among merit staff. All staff, regardless of whether they are State employees or employees of a service provider, must be trained to carry out the duties set forth in the ES regulations. The Department further affirms its commitment for the National Monitor Advocate (NMA) and Regional Monitor Advocates (RMAs) to continue to provide technical assistance to ensure services are offered to MSFWs on an equitable basis.

III. Section-by-Section Discussion of Public Comments and Final Regulations

The discussion below responds to section-specific comments, as well as details any changes made in response to those comments. If the Department did not receive comments regarding a particular section, that section is not discussed below, and the final rule adopts that section as proposed. The Department also has made some non-substantive changes to the regulatory text to correct grammatical and typographical errors, in order to improve the readability and conform the document stylistically, that are not discussed below.

A. Part 651—General Provisions Governing the Wagner-Peyser Act Employment Service

§ 651.10 Definitions of Terms Used in This Part and Parts 652, 653, 654, and 658 of This Chapter

Section 651.10 establishes terms and definitions used throughout the Wagner-Peyser Act regulations. The Department received several comments regarding the changes to terms and definitions proposed in the NPRM, which are responded to below. If no commenter addressed a specific term, that term is not addressed below and has been published in the regulatory text as proposed in the NPRM.

Employment Service (ES) Office

Noting that WIOA envisions an integrated workforce development system that provides streamlined service delivery of the WIOA core programs, including ES activities, one commenter questioned the necessity of defining an ES office separately from a one-stop center. The commenter suggested that the Department instead use the term ''one-stop center'' in the regulations. While it is true that WIOA envisions an integrated workforce development system, including the ES as a core program, the Department is not removing the definition of ''Employment Service (ES) office,'' because the Wagner-Peyser Act, WIOA, and their implementing regulations use the term. Therefore, a definition of the term is helpful to clarify States' obligations in administering these programs. For example, sec. 121(e)(3) of WIOA provides that ''the employment service offices in each State shall be colocated with one-stop centers.'' The Department uses and defines the term ''Employment Service (ES) office'' to make clear what is required to be colocated—any site where Wagner-Peyser Act ES activities are provided. This helps ensure that States provide and align ES activities with WIOA services as part of the workforce development system.

Employment Service (ES) Office Manager

One commenter noted the term ''Employment Service (ES) Office Manager'' may not be necessary if the Department removes the term ''ES office,'' as ES activities are provided in a one-stop center. The commenter suggested using the term ''One-Stop Center Manager.'' As explained above, the Department will retain the definition of ''Employment Service (ES) office,'' because the term is used in WIOA and the Wagner-Peyser Act, and it helps clarify States' responsibilities in providing ES activities. Likewise, the Department is retaining the definition of ''Employment Service (ES) Office Manager,'' because this term is used in the Wagner-Peyser Act and WIOA's implementing regulations to describe the individual in the ES office who carries out key responsibilities in providing services to job seekers and employers. Therefore, this is a necessary term to include in the regulation for the effective management and oversight of local ES staff.

Employment Service (ES) Staff

The Department will remove the term ''contractors'' from the definition of ES staff in finalizing the rule. As explained above, States using a service provider to deliver ES activities will be making a subaward to a subrecipient under the Uniform Guidance. See 2 CFR 200.92, 200.93, and 200.330. While the State may call its agreement with its service provider/subrecipient a contract, the service provider does not meet the definition of a contractor under the Uniform Guidance. See 2 CFR 200.23 and 200.330. Therefore, to avoid confusion, the Department is removing the term ''contractors'' from the definition of ES staff.

One commenter requested the Department modify its definition of ''Wagner-Peyser Act Employment Service staff (ES staff)'' to remove the term ''Wagner-Peyser Act'' so the definition is alphabetically in the definitions and for consistency with its use in the regulation. The commenter noted the definition does not appear to need the lead-in ''Wagner-Peyser Act,'' as the other definitions that contain ''Employment Service'' do not include similar language. The commenter also noted that removing ''Wagner-Peyser Act'' would make all ''Employment Service'' definitions alphabetical for ease of identification. The Department agrees with the commenter and has changed the definition of ''Wagner-Peyser Act Employment Service staff (ES staff)'' to ''Employment Service (ES) staff.'' The Department agrees that using the term ES staff is clearer and more user-friendly.

One commenter requested the Department define the term ''staff of a subrecipient'' in the Department's proposed definition for ''Wagner-Peyser Act Employment Service (ES) staff'' in this regulation, because it is unclear how this category is applicable to State employees or subrecipients. The Department clarifies that the term ''subrecipient'' in the definition of ES staff has the meaning given to that term in the Uniform Guidance at 2 CFR 200.93. As explained above, because States using a service provider to deliver ES activities will be making a subaward, the individuals providing these services will be the staff of a subrecipient. Therefore, the Department has chosen to leave this term in the definition of the term ES staff. However, because the term is defined in the Uniform Guidance, the Department has decided it is not necessary to define it here in 20 CFR 651.10.

Field Checks

One State agency questioned if the intent of the revised definition of ''field checks'' was to not allow SWA personnel to conduct field checks, as the added reference to ''through its ES offices'' appeared to limit the field checks function to only local staff and, as added, Federal staff. The Department clarifies that it is not the intent of the Department to exclude SWA officials (individuals employed by the SWA or any of its subdivisions) from conducting field checks. The Department intends for all ES Staff, including the SMA and other SWA officials, to conduct field checks. The Department is removing the language providing that field checks be conducted through ES offices to make this clarification. The final regulatory text is, ''Field checks means random, unannounced appearances by ES staff and/or Federal staff at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.''

Respondent

One commenter requested the Department define the term ''service provider'' as it is used in the Department's proposed definition of ''respondent'' in this regulation. The Department does not consider a definition for the term ''service provider'' to be necessary. In the context of this regulation, the service provider is the entity or entities that deliver services under the Wagner-Peyser Act. The Department clarifies that it is adding this term to the definition of ''respondent'' to ensure that all individuals or entities providing services are held accountable.

B. Part 652—Establishment and Functioning of State Employment Service

Part 652 discusses State agency roles and responsibilities; rules governing ES offices; the relationship between the ES and the one-stop delivery system; required and allowable Wagner-Peyser Act services; universal service access requirements; provision of services and work-test requirements for UI claimants; and State planning. The changes in this section increase the flexibility available to States in providing Wagner-Peyser Act-funded services and activities by allowing them to use alternative staffing models.

§ 652.215 Can Wagner-Peyser Act-funded activities be provided through a variety of staffing models?

Section 652.215 governs how States may staff the provision of Wagner-Peyser Act-funded services. The Department received comments regarding the flexibility provided in the

regulation and has responded to them below. The Department is publishing § 652.215 as proposed.

Several commenters opposed the rule because they did not agree that removing the requirement that States provide Wagner-Peyser Act-funded activities with staff other than merit-staffing rule was a legally permissible policy. The commenters explained that, although the Department stated in the WIA and WIOA rulemakings that the imposition of the merit-staffing requirement was a policy choice and interpretation of the Wagner-Peyser Act, nothing in either of these rulemakings indicated (explicitly or implicitly) that the policy was not legally required by the statute or that the Department was free to choose a different interpretation of the Act. Section 3(a) of the Wagner-Peyser Act requires the Secretary to develop and prescribe ''minimum standards of efficiency.'' As explained in the WIA and WIOA rulemakings, and acknowledged by commenters, the Department interprets this provision to give the Department the discretion to impose a merit-staffing requirement.

In the 1998 case *Michigan* v. *Herman,* the U.S. District Court for the Western District of Michigan found that the Wagner-Peyser Act ''does not explicitly require merit-staffing'' and determined that the language of sec. 3(a) of the Act is ''broad enough to permit the [Secretary] to require merit-staffing.'' 81 F. Supp. 2d 840, 847–48 (W.D. Mich. 1998). However, the court noted that ''there is ample basis for a conflicting interpretation of the Wagner-Peyser Act's requirements,'' suggesting that the Department has latitude to interpret sec. 3(a) to permit the flexibility afforded in this regulation. If the court believed that sec. 3(a) was limited to the Department's previous interpretation—that it required the use of merit staff—it would have explicitly so stated.

In the WIA Interim final rule preamble, the Department stated that the ''regulations reflect[ed] the Department's interpretation of the Wagner-Peyser Act, affirmed in [*Michigan* v. *Herman*], to require that job finding, placement and reemployment services funded under the Act . . . be delivered by public merit-staff employees.'' 64 FR 18662, 18691 (Apr. 15, 1999). The Department described its interpretation as that affirmed in *Michigan* v. *Herman,* which held that the Department could require merit-staffing, but not that it must. And the opinion in that case describes the Department's own interpretation of the statute as one giving ''discretion to the Secretary'' to require merit-staffing. *Herman,* 81 F. Supp. 2d at 846. The Department's statement in the WIA preamble, therefore, should not be construed as denying the Department discretion over the merit-staffing question.

In the WIA final rule, the Department did not address whether the Wagner-Peyser Act obligated the Department to impose a merit-staffing requirement for Wagner-Peyser Act-funded services. 65 FR 49294, 49385 (Aug. 11, 2000). Instead, the Department simply noted that the final WIA regulation imposed a merit-staffing requirement reflecting the Department's authority under the Wagner-Peyser Act, as affirmed in *Michigan* v. *Herman,* to require Wagner-Peyser Act-funded services be provided by merit staff. Thus, in the WIA final rule, the Department did not opine on whether sec. 3(a) mandated the imposition of a merit-staffing requirement for Wagner-Peyser Act-funded services.[6]

Finally, in the WIOA NPRM, the Department explained that the Department has maintained the policy of requiring merit-staffing since the earliest years of the ES and that *Michigan* v. *Herman* upheld this policy. 80 FR 20805 (April 16, 2015). The Department explained that it would continue this policy from WIA to WIOA. Id. Notably, the WIOA NPRM did not suggest that there was a statutory requirement in the Wagner-Peyser Act for merit staff. Id. The language in the WIA and WIOA rulemakings demonstrates that since the decision in the *Michigan* v. *Herman* case, the Department has not read the Wagner-Peyser Act to include a statutory requirement that Wagner-Peyser Act services be delivered by State merit staff. Instead, as the Department explained in the NPRM for this final rule, the Department has previously read this provision to give it the discretion to impose a merit-staffing requirement.

The commenters indicated that they thought the Department had an obligation in prior rulemakings to state that the policy was not legally required in order to make the change in this final rule. The Department disagrees. Throughout this rule's NPRM and final rule preambles, the Department has amply explained its legal authority and its policy bases for providing new staffing flexibility under the Wagner-Peyser Act. That is sufficient. The Department does not agree with commenters that there is an additional requirement to notify the public in prior rulemakings (or in other ways) that it is within the Department's discretion to revise, through notice-and-comment rulemaking, its interpretation of the Wagner-Peyser Act.

A number of commenters opposed the flexibility in the proposed rule that would allow States to provide Wagner-Peyser Act-funded services with staff other than State merit staff explaining that the proposal would remove a long-standing and legally required merit-staffing requirement. The Department acknowledges that it has had a long-standing policy of requiring States to deliver Wagner-Peyser Act labor exchange services with State merit staff. However, as explained above, the Wagner-Peyser Act does not contain a statutory requirement to impose a merit-staffing requirement on States. Instead, the Department's imposition of a requirement that ES activities be provided by State merit staff was the Department's policy decision, and one that is permissible under the Act.

It is within agencies' authority to change long-standing policies, such as the merit-staffing requirement. In making the change, agencies are required to ''display awareness'' that they are changing their position and show that there are good reasons for the new policy. *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2125–26 (2016). The Department's proposal did so. In the NPRM, the Department acknowledged the policy change and explained the reasons for the change: (1) Allows States to align the provision of ES activities with WIOA's service-delivery model so the programs work better together; (2) allows States to develop innovative and creative approaches to delivering ES activities with limited resources; and (3) frees resources to assist job creators and workers more effectively. In the NPRM, the Department also explained that it has found that services similar to those provided through the ES program can be delivered effectively through systems without the specific Federal regulatory requirements regarding State merit-staffing.

Several commenters stated that the Department's analysis had not justified a reversal of the Department's long-standing position that the Wagner-Peyser Act legally requires the delivery of ES activities through merit staff. The policy reasons for the Department's decision to allow States flexibility in staffing ES programs are discussed at length throughout the NPRM's preamble

[6] Here, the Department's interpretation of the Wagner-Peyser Act should be distinguished from its description of its own regulations. The Department described its regulations as ''mak[ing] clear that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency.'' 65 FR 49385. But that is different from stating that the Act itself requires merit-staffing.

and include the benefits of granting States flexibility to fit the unique needs of their particular workers, employers, and ES programs; freeing up resources to better serve job creators and job seekers; better integrating the ES program with services under WIOA; and the successful functioning of flexible staffing arrangements in the provision of other, comparable services. Notably, the regulatory changes that this final rule adopts do not require the States to change their staffing mandates for ES programs. Rather, States will be free to choose the staffing model that best fits their needs.

Another commenter stated that the Department was not legally justified in making the changes proposed in the NPRM. The Department disagrees. First, in the NPRM, the Department explained that the Wagner-Peyser Act does not dictate particular staffing models. 84 FR 29433, 29436 (June 24, 2019). Instead, sec. 3(a) of the Wagner-Peyser Act requires the Department to develop and prescribe ''minimum standards of efficiency'' in the provision of ES programs. The Department noted that the broad scope of sec. 3(a) has been recognized in court, and it explained that in *Michigan* v. *Herman,* the court recognized that, while this provision is broad enough to permit the Department to impose a merit-staffing requirement, there was more than enough basis for a conflicting interpretation of the Wagner-Peyser Act. Id.

Second, the Department explained in the NPRM preamble that, while it may have previously cited sec. 5(b) as support for imposing mandatory merit-staffing, that section ''does not require the imposition of such a requirement.'' Id. Instead, the NPRM explained that this provision merely conditions States' Wagner-Peyser Act funds on merit-staffing in the administration of UI programs. Id.

Third, the Department also explained its interpretation of the Wagner-Peyser Act in the WIA and WIOA rulemakings, stating that while the Department continued to require State merit-staffing in these rulemakings, this was maintained as a policy choice. Id.

A number of commenters opposed the proposed rule, because they stated it is contrary to how Congress interprets the Wagner-Peyser Act. Some commenters stated that over the years, Congress has taken several actions to require merit-staffing in the ES system or that reaffirmed the Wagner-Peyser Act's statutory requirement to have merit-staffing. Commenters gave several examples of these actions: (1) The Intergovernmental Personnel Act of 1970 (IPA) named the Wagner-Peyser Act as one of the two acts administered by the Department that transferred merit authority to the Civil Service Commission (now the Office of Personnel Management); (2) the regulations implementing the IPA demonstrated there is a statutory requirement to have merit-staffing in Wagner-Peyser Act-funded programs; (3) in 2006, when the Department attempted to change its legal interpretation of the Act, Congress blocked the proposal through a provision in the appropriation; and did so for several years afterwards until the proposed rule was withdrawn; and (4) the Department issuing Training and Employment Guidance Letter (TEGL) No. 11–12, Using Funds Authorized Under Section 7(a) of the Wagner-Peyser Act of 1933 for Intensive Services as Defined by the Workforce Investment Act (Jan. 3, 2013). The Department does not agree that the IPA and its implementing regulations prevent the Department from allowing added staffing flexibility under the Wagner-Peyser Act. Section 208 of the IPA transferred the authority of the Department and other agencies to prescribe standards for a merit system of personnel administration in various Federal grant-in-aid programs. 42 U.S.C. 4728. In particular, the IPA transferred the Department's duties under the Wagner-Peyser Act and sec. 303(a)(1) of the Social Security Act (SSA), to the extent that the functions, powers, and duties under these laws relate to the prescription of personnel standards on a merit basis. 42 U.S.C. 4728(a) and (a)(2). The OPM regulations implementing the IPA provide a list of programs with a statutory or regulatory requirement for merit staff. The ''Employment Security (Unemployment Insurance and Employment Services)'' program, which cites as authority the SSA and the Wagner-Peyser Act, is listed as having a ''statutory requirement'' for merit staff. 5 CFR part 900, subpart F, Appendix A.

However, there is no indication that Congress, in including the Wagner-Peyser Act in sec. 208 of the IPA, intended to affirm a merit-staffing requirement not found in the Act itself, or to impliedly amend the Act to include one, rather than simply reflecting existing merit system functions being carried out by the Department at that time. The Department notes that the question of Congress's intent in enacting the IPA was considered by the court in *Michigan* v. *Herman.* After reviewing the text and legislative history of the Wagner-Peyser Act and the IPA, among other arguments, the court concluded that the Wagner-Peyser Act ''does not explicitly require merit-staffing'' and that ''Congress has never clearly ratified or rejected the Department's inclusion of a merit-staffing requirement.'' *Michigan* v. *Herman,* 81 F. Supp. 2d at 847–48.

Similarly, there is no indication that OPM's regulations at 5 CFR part 900 are intended to be authoritative or interpretive of other statutes, rather than merely descriptive. The predecessor to the current part 900 regulations was issued jointly in 1963 by the Department of Health, Education and Welfare, the Department of Labor, and the Department of Defense, prior to the passage of the IPA and its resulting transfer of functions. It was codified at 45 CFR part 70. In prescribing merit standards under the Wagner-Peyser Act at that time, the regulations at part 70 cited as authority a provision in the Department's yearly congressional appropriation requiring merit-staffing (former 29 U.S.C. 49n). This provision was not repeated in the Department of Labor Appropriations Act, 1965 (Pub. L. 88–605, 78 Stat. 959, 960 (1964)), or in any such act thereafter. Thus, the current OPM regulations, as they relate to the Wagner-Peyser Act, originated not only from a former departmental interpretation of the Wagner-Peyser Act, but also in a long-expired appropriations rider. Notwithstanding DOL's imposition of a merit-staffing requirement at the time of the IPA's enactment, there was no longer any corresponding statutory requirement in the Wagner-Peyser Act.

Further, while Appendix A in the current part 900 lists the ES as having a ''statutory requirement'' for merit-staffing, the accompanying citation is to sec. 5(b) of the Wagner-Peyser Act, 29 U.S.C. 49d(b). Section 5(b) does not impose any such requirement, but merely requires the Secretary to certify that States are complying with sec. 303 of the SSA (requiring, among other things, use of merit staff by States in administering their UI programs) and that States are coordinating ES activities with the provision of UI claimant services. The provisions administered by OPM constitute a transfer of functions and apply only to the extent the Department imposes an underlying merit-staffing requirement, which, as discussed above, the Wagner-Peyser Act does not impose. Indeed, OPM has previously revised Appendix A to reflect programmatic changes of the type effected by this final rule. Neither the IPA nor the OPM regulations contain an independent legal requirement for merit-staffing in the ES.

The Department does not agree that the language in the Revised Continuing

Appropriations Resolution, 2007 (Pub. L. 110–5) (Feb. 15, 2007)—the 2006 appropriation commenters referred to—demonstrated that Congress was reaffirming a merit-staffing statutory requirement for the ES. In 2007, the appropriation for fiscal year 2007 provided that none of the funds made available were to be used to finalize or implement any proposed regulation under WIA, the Wagner-Peyser Act, or the Trade Adjustment Assistance Reform Act of 2002 (TAARA) until legislation reauthorizing WIA and TAARA was enacted. Nothing in this language indicates that Congress thought the Department did not have the legal authority to give States the flexibility to provide Wagner-Peyser Act-funded services with non-merit staff. Instead, the Department views this appropriation language as Congress's disapproval of the Department's policy choice, rather than a definitive statement on the Department's legal authority.

As explained above, the Wagner-Peyser Act does not contain a statutory requirement that State merit staff perform ES activities. The Department now interprets the Wagner-Peyser Act to give States the flexibility to determine whether providing Wagner-Peyser Act-funded services through merit staff is the best way to deliver these services for their State. States are free to continue to have merit staff provide these services or to adopt other staffing models that may work better for their State.

Several commenters opposed the proposed rule, because, they stated, merit-staffing is a statutory requirement and the Department does not have discretion to rescind this statutory requirement. These commenters pointed to TEGL No. 11–12 as affirming that the merit-staffing requirement is statutorily mandated in the Wagner-Peyser Act or for the proposition that the Department does not have the authority or discretion to rescind the statutory requirement that Wagner-Peyser Act-funded activities be provided by merit-staffed employees.

The Department agrees that Federal agencies do not have the discretion to rescind statutory requirements. However, as explained in response to other commenters, it is the Department's position that the Wagner-Peyser Act does not contain a statutory requirement for State merit staff to provide ES activities. Because the Department only interprets the Wagner-Peyser Act to *permit* the Department to impose such a requirement, it is within the Department's discretion to provide States the flexibility to deliver these services through merit staff or otherwise.

Additionally, the Department notes TEGLs are guidance documents issued by ETA. They are interpretations of the statutes the Department administers and the regulations the Department promulgates to implement these statutes. TEGL No. 11–12, released in 2013, states that the guidance did not change the requirement that State merit staff employees deliver Wagner-Peyser Act labor exchange services, and it addresses the use of Wagner-Peyser Act funds to provide intensive services under WIA. The TEGL simply reminds States that nothing in the guidance changes the regulatory requirement in the WIA regulations that States provide Wagner-Peyser Act-funded services with merit staff. The TEGL does not, as commenters suggested, state that there is a statutory requirement to provide Wagner-Peyser Act-funded services with merit staff. Nor does it address the Department's authority or discretion to rescind a statutory requirement.

Several commenters opposed the rule because they stated the history and origins of the Wagner-Peyser Act and the inherently governmental nature of the Wagner-Peyser Act functions show Congress's intention to require merit-staffing as a foundation of the ES system. Relatedly, a number of commenters opposed the rule because of the integration between the UI work test and the ES staff. These commenters explained that ES staff perform the UI work test as provided under sec. 7(a)(3)(F) of the Wagner-Peyser Act to ensure that claimants are able to work, available for work, and actively seeking work. The commenters stated these are federally required conditions of State UI eligibility and, in this relationship, the ES staff function as gatekeepers, making the role of the ES staff inherently governmental. Because these commenters viewed this activity as inherently governmental, they stated these activities can only be handled by State merit staff. Similarly, some commenters stated that the UI work test duties are inherently governmental in nature, so they cannot be privatized. Other commenters stated that because the ES administers the work test to determine if individuals are able and available to work and actively seeking employment, the ES worker is in the position of determining eligibility for UI. The commenters stated that eligibility determination is a government function properly carried out by merit-based staff.

The Department appreciates the history and development of the Federal ES beginning in the early twentieth century. Following years of a two-tiered, underfunded, and largely ineffective network of employment offices, the Wagner-Peyser Act was passed in 1933 in order to promote greater cooperation and coordination between the Federal and State programs, to avoid active competition between the two, and to ameliorate wastefulness in the system. See S. Rep. No. 73–63, at 3–4 (1933). This final rule is in keeping with the spirit of Federal-State cooperation that undergirds the Wagner-Peyser Act, by allowing States the choice to staff their ES program activities and services as they deem most effective.

To the extent that the system of State-run employment offices was created in order to put a stop to the abuses of private employment agencies,[7] the Department notes that this final rule in no way marks a return to a private system of employment firms. All ES activities and services nationwide will continue to be provided through the public ES. Nor will the States be subject to any risk of patronage that may have been a concern in the early years of the program, prior to the development of many of the legal safeguards that are currently in place. States that opt to use alternative staffing methods will continue to be accountable, subject to all of the obligations found in the ES regulations regarding effective service delivery, including oversight and monitoring, as well as all other applicable laws, in administering the program.

The Department does not agree with commenters that the functions of the Wagner-Peyser Act are inherently governmental. The Office of Management and Budget (OMB) has defined inherently governmental functions as those functions ''so intimately related to the public interest as to mandate performance only by Federal employees.'' OMB, Performance of Commercial Activities, Circular No. A–76 (August 4, 1983 (Revised 1999)). Inherently governmental functions, according to this guidance, normally fall into two categories: (1) Acts of governance; and (2) monetary transactions and entitlements. Acts of governance are the discretionary exercise of government authority, such as criminal investigations, prosecutions, and other judicial functions. Monetary transactions and entitlements include functions such as tax collection and revenue disbursements.

Section 7 enumerates the services the ES provides. These services include, among others, job search and placement

[7] This history is detailed in Henry P. Guzda, ''The U.S. Employment Service at 50: it too had to wait its turn,'' Monthly Labor Review, 12–19 (June 1983).

activities for job seekers, appropriate recruitment services for employers, and developing linkages between services under the Wagner-Peyser Act and other Federal or State legislation. None of these activities are inherently governmental because they do not involve governance or monetary transactions and entitlements. Indeed, one of private firms' core functions is finding the employees they need, and there are innumerable private firms offering job-search and job-placement services. In addition, many of these services, such as the job search and placement activities, are similar to the services WIOA provides. That WIOA does not have a merit-staffing requirement supports the Department's position that these activities are not inherently governmental.

The Department acknowledges that there are important linkages between the ES program and the UI program. Section 7(a)(3)(F) of the Wagner-Peyser Act requires ES staff to conduct the work test for the UI program, including making eligibility assessments. In the UI program context, the Department has previously explained that States may not use a service provider for inherently governmental functions and that these functions must be performed by State merit staff. See Unemployment Insurance Program Letter (UIPL) No. 12–01, Outsourcing of Unemployment Compensation Administrative Functions, Dec. 12, 2000. In this UIPL, the Department listed a number of UI functions that are considered inherently governmental and thus must be performed by State merit staff. One such function is determining whether to pay (or not pay) UI benefits.

20 CFR 652.209(b)(2) requires the ES to administer the work test and conduct eligibility assessments for UI claimants. The UI work test includes activities designed to ensure that an individual whom a State determines to be eligible for UI benefits is able to work, available for work, and actively seeking work in accordance with the State's UI law. In providing these services, it is possible ES staff may detect eligibility issues for UI claimants. However, the Wagner-Peyser Act implementing regulations and guidance make clear that only UI merit staff members may adjudicate UI eligibility issues. Therefore, 20 CFR 652.210(b)(3) requires ES staff to provide UI program staff with information about a UI claimant's ability or availability for work or the suitability of work offered to UI claimants. This ensures that UI merit staff have the information they need to adjudicate any eligibility issues detected during the work test or eligibility assessment.

UIPL No. 14–18, Unemployment Insurance and the Workforce Innovation and Opportunity Act (Aug. 20, 2018), further explains how ES staff meet the requirements to provide these services to UI claimants and offer information about any eligibility issues the ES detects while providing these services. Specifically, the UIPL explains how States ensure that the necessary information about a UI claimant's ability, availability, or the suitability of work offered is referred to the State's UI staff. First, States are required to have in place an ''effective feedback loop'' to inform UI staff whether the claimant reported as directed and participated in the appropriate eligibility assessment and/or services. Second, States must ensure ES staff are trained to conduct a thorough eligibility assessment to identify potential eligibility issues for referral to UI staff. Third, States must ensure that ES staff are trained to properly document information for use by UI staff in adjudicating any eligibility issues. Finally, this feedback loop must be in place and clearly documented. Id. at 10.

The work test and eligibility assessments themselves do not involve making a determination on whether to pay (or not pay) unemployment compensation; instead, the individuals conducting the test and assessment gather information and then share that information through the above-mentioned feedback loop with the UI program staff who make the determination about an individual's eligibility or continuing eligibility for unemployment compensation. Id. The Department requires a clearly documented feedback loop that advises UI staff whether the individual reported as directed and participated in the eligibility assessment and/or services. Id. Sending this information to UI staff ensures that only UI merit staff members are adjudicating UI eligibility issues, consistent with the requirement in sec. 303(a)(1) of the SSA that the UI program maintains personnel standards on a merit basis.

One commenter opposed the proposed rule because, the commenter stated, that Congress envisioned at the Wagner-Peyser Act's inception, and affirmed over the years, a professional cadre of State government ES employees selected by merit to avoid favoritism or partisanship in the delivery of services. As discussed above, the Wagner-Peyser Act does not reflect any express intent to require merit-staffing in the ES. Congress could have chosen to insert such a requirement in the Wagner-Peyser Act at the time of its passage, or at any time thereafter, as it did in other legislation—for example, sec. 303(a)(1) of the SSA. Further, while a merit-staffing requirement has been included in a number of previous departmental appropriations acts, Congress specifically chose not to make this a permanent feature of the Wagner-Peyser Act. Instead, since its passage in 1933, the Wagner-Peyser Act has explicitly given the Secretary discretion under sec. 3(a) to develop and prescribe ''minimum standards of efficiency'' in the administration of the ES program. This discretion was affirmed in *Michigan* v. *Herman,* where the court found no conclusive evidence that Congress had intended to impose a merit-staffing requirement, or had affirmed or rejected such a requirement in the ensuing decades.

Several commenters opposed the proposed rule because they viewed it as inconsistent with the reasons Congress initially created the ES. They contended that before Congress passed the Wagner-Peyser Act, there was corruption, political patronage, and inequities in private employment offices nationwide and that in passing the Act, Congress envisioned a State merit system to prevent favoritism and promote equality in the delivery of services. This final rule is consistent with the purposes of the Wagner-Peyser Act, which was passed primarily to strengthen the overall structure, value, and effectiveness of the ES system in the United States through innovation. The Department recognizes the history of ES offices in the United States, and the problems that first prompted States to create their own free, public employment offices. This final rule does not detract from the public nature of an ES system that offers universal access to job seekers, nor does it vest in private entities the ultimate responsibility for effective service delivery to the public. The myriad of obligations to which the States are subject as conditions for receipt of funding under the Wagner-Peyser Act, as well as obligations imposed by other applicable laws, remain unchanged by this final rule.

One commenter viewed the history of the Wagner-Peyser Act and the inherently governmental nature of its functions carried out by merit staff as a foundation of the ES system and that Congress's actions to protect merit-staffing in the ES since the law's New Deal-era passage show Congressional intent for and support of merit-staffing for ES. The Department agrees that the staff who provide Wagner-Peyser Act-funded services are key to the success of the program and job seekers and employers' use of the ES. However, the Department views the foundation of the

ES to be the services provided to job seekers and employers. Each State has unique needs from the ES and a one-size-fits-all staffing model may not be able to take these needs into account. Therefore, the Department has determined it would be most appropriate to give States the flexibility to determine which staffing model provides the most effective services to their customers.

The Department acknowledges that Congress has taken actions related to merit-staffing of Wagner-Peyser Act-funded services. However, as explained above, while the imposition of a merit-staffing requirement is a permissible interpretation of sec. 3(a) of the Wagner-Peyser Act, it is not required by the Act.

Likewise, several commenters opposed the flexibility in the proposed rule to provide Wagner-Peyser Act-funded services with staff other than merit staff, because they believed Congress would not approve of the flexibility. Specifically, the commenters explained that Congress's actions since the bill's passage show the original intent of the authors of the Wagner-Peyser Act and Congress's intent to require merit-staffing in the ES. Similarly, some commenters opposed the proposed rule because, they stated, there was a pattern of Congressional action to prevent the ''privatization'' (as they termed it) of ES activities, revealing that Congress has a critical role in supporting and maintaining the ES merit-staffing requirement. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. The Department acknowledges that Congress has taken actions since the enactment of the Wagner-Peyser Act that maintained the Department's regulatory requirement that States provide ES activities with State merit staff. For the reasons discussed above, there is no current statutory merit staff requirement in the Wagner-Peyser Act. Since the enactment of the Wagner-Peyser Act in 1933, a number of years have passed during which Congress could have either amended the Wagner-Peyser Act to make it a statutory requirement that States provide Wagner-Peyser Act-funded services with merit staff or continued to require use of merit staff in the ES system via appropriations rider, as was done for a number of years. But Congress has not done so.

Most notably, on May 15, 1998, in *Michigan* v. *Herman* the court held that there was no explicit statutory mandate in the Wagner-Peyser Act to require States to deliver Wagner-Peyser Act-funded services with State merit staff. 81 F. Supp. 2d at 847. On August 7, 1998, a little over two months later, Congress enacted WIA, which included a number of amendments to the Wagner-Peyser Act. Thus, as of May 15, 1998, Congress was aware that a court had concluded there was no explicit merit-staffing requirement in the Wagner-Peyser Act. Had Congress wanted to make it a statutory requirement, Congress could have used the 1998 amendments to include one. However, Congress did not include such a requirement in these 1998 amendments. Similarly, in 2014, Congress again re-authorized the workforce development system and amended the Wagner-Peyser Act. Like the 1998 amendments, these amendments also did not include a statutory requirement to provide ES activities with State merit staff.

Commenters also stated that later congressional actions can demonstrate the original intent of the authors of the Wagner-Peyser Act. The Wagner-Peyser Act was enacted in 1933. It is questionable whether congressional actions taken later, sometimes decades later, should have much relevance to the intent of the Act's authors. Regardless, the key language of the Act itself, which Congress has not amended, shows no congressional intent to impose a permanent merit-staffing requirement.[8]

Several commenters opposed the proposed rule because they believe the ES system only qualifies as a ''public employment office'' if the employees are State merit-staffed employees. The commenters noted that sec. 1 of the Wagner-Peyser Act requires the establishment of a ''national system of public employment service offices,'' and the commenters contended that a principal component of such a system are ''employees of State government [who are] hired and promoted on the basis of merit under a civil service system.'' They believe this is what makes the offices ''public.'' Without merit-staffed State government employees, the commenters asserted, the public nature of the ES is given to private control and is no longer a ''public employment office.'' These commenters interpreted the term ''public'' in the phrase ''public employment office'' in sec. 1 of the Wagner-Peyser Act to refer to the employment relationship between the individuals providing Wagner-Peyser Act-funded services and the State. However, nothing in the Wagner-Peyser Act indicates this was the intent of Congress in establishing the ES. As explained above, the history of the Wagner-Peyser Act's passage indicates Congress established the ES to promote greater cooperation and coordination between the Federal and State programs, to avoid active competition between the two, and to ameliorate wastefulness in the system. See S. Rep. No. 73–63, at 3–4 (1933). To the extent that the ES was created to end the abuses of private employment agencies,[9] the Department notes that this final rule in no way marks a return to a private system of employment firms. All ES activities and services nationwide will continue to be provided through State-administered offices, with services universally available and financed with public funding via a grant from the Department, which will continue to oversee that States meet their obligations under the Wagner-Peyser Act. Accordingly, contrary to the commenter's assertion, the Department will continue to administer a national system of public employment service offices under this final rule.

The Department notes that sec. 2(6) of the Wagner-Peyser Act provides that the term ''employment service office'' means a local office of a State agency. The Department interprets this to mean that an ES office is any local office where the State agency provides ES activities (be it through State employees or a service provider). This is consistent with the definition the Department proposed for ''ES office'' in the NPRM and finalized in this rule.

Several commenters opposed the flexibility provided in the proposed rule because they stated it contradicts the Department's long-standing position. They contended that it has been a long-standing position of the Department, as the Department argued in *Michigan* v. *Herman,* that the Wagner-Peyser Act requires merit-based staffing. Commenters explained that in the *Michigan* v. *Herman* case, the Department argued that Congress intended merit-staffing to be a key component of a public ES at the outset

[8] The original Wagner-Peyser Act employed this language: ''The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency . . . .'' Public Law 73–30 § 3(a), 48 Stat. 113, 114 (1933). The Act, as amended, uses the same ''minimum standards of efficiency'' language: ''The Secretary shall assist in coordinating the State public employment service offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency . . . .'' 29 U.S.C. 49b(a) (2018).

[9] This history is detailed in Henry P. Guzda, ''The U.S. Employment Service at 50: it too had to wait its turn,'' Monthly Labor Review, 12–19 (June 1983).

and described how Congress has reaffirmed this principle over time. The Department acknowledges that it has required States to provide labor exchange services with State merit staff. However, as explained elsewhere in this final rule, the Department is now changing its policy and is giving the States the flexibility to determine what staffing model works best for their State's needs. In *Michigan* v. *Herman,* the Department contended that its construction of the Wagner-Peyser Act to require merit staffing was supported by the language of the statute and was consistent with Congressional intent. However, the court ruled that it ''cannot state, as a matter of law, which of the various interpretations presented more accurately reflects Congressional intent'' and concluded that sec. 3(a) was broad enough to permit the Department to require merit-staffing. *Michigan* v. *Herman,* 81 F. Supp. 2d at 847–48. Implicit in the court's decision is that it would also be a permissible read of this provision to not require merit-staffing. Now, consistent with the decision in *Michigan* v. *Herman,* the Department is exercising its discretion to interpret sec. 3(a) of the Wagner-Peyser Act and will no longer require States to use State merit staff to deliver labor exchange services. As explained above, the Department notes that it is permissible for Federal agencies to change their interpretations as long as they provide a reasoned explanation for the change. *Encino Motorcars, LLC,* 136 S. Ct. at 2125. This includes ''display[ing] awareness'' that the agency is changing its position and showing that there are good reasons for the change. Id. at 2126. As required, in the NPRM for this rule, the Department acknowledged that its proposal was a departure from the requirement to use merit staff and provided four reasons for this change. See 84 FR 29433, 29434 (June 24, 2019). No commenters expressed that the prior rule engendered substantial reliance interests, and even if they had, as noted, the Department has provided a substantial justification for this change.[10]

One commenter asked if private entities receiving Wagner-Peyser Act funds would be required to comply with State and Federal freedom of information act rules and regulations. The Freedom of Information Act (FOIA) establishes a statutory scheme for members of the public to use in making requests for Federal agency records. Only agencies within the Executive Branch of the Federal government, independent regulatory agencies, Amtrak, and some components within the Executive Office of the President, are subject to the FOIA. See 5 U.S.C. 551(1) and 552(f)(1) and 49 U.S.C. 24301(e). Therefore, if a private entity receives Wagner-Peyser Act funds from a State that entity is not subject to the FOIA or its implementing regulations.

However, the Department notes that each State has its own open record law. The Department is not the appropriate entity to interpret the application of a State's laws. Entities receiving Wagner-Peyser Act funds from a State must conduct their own analysis to determine the applicability of a State's freedom of information laws and regulations.

One commenter opposed the proposed rule, arguing in part that it could lead to politicization, which the commenter stated is currently prohibited, because most State employees are covered by the Hatch Act. The Hatch Act of 1939 (Pub. L. 76–252) restricts the political activity of individuals principally employed by State, District of Columbia, or local executive agencies and who work in connection with programs financed in part by Federal loans or grants. The Department acknowledges that some individuals providing ES activities may no longer be covered by the Hatch Act, as they may no longer be principally employed by a State, the District of Columbia, or a local executive agency. However, the ES is a universal access program that requires that labor exchange services be available to all employers and job seekers. See 20 CFR 652.207. States, regardless of who is providing the services, must ensure that this requirement is met. If a State decides to use the staffing flexibility in this final rule to provide these services, the State's monitoring will include ensuring the universal access requirement is met. In turn, the Department's monitoring of the State will also focus on this requirement.

One commenter opposed the proposed rule because the commenter stated that recognizing the inherently governmental functions of the ES, Congress has acted many times in the 85-year history of the Wagner-Peyser Act to require merit-staffing in the ES and has recognized that any changes require congressional action. The Department does not agree that changes in the merit-staffing requirement can only be made through congressional action. As explained above, the Wagner-Peyser Act permits the Department to require States to deliver Wagner-Peyser Act-funded services with State merit staff, but it does not impose a statutory requirement that such services be merit-staffed. Because the merit-staffing requirement is not mandated by statute, as noted above, it is within the Department's authority to provide States with this flexibility.

One commenter opposed the proposed rule because of the potential impact on the Reemployment Services and Eligibility Assessment (RESEA) program. The commenter explained that ''[p]rivatizing the public Employment Service'' could jeopardize the effectiveness of RESEA. The commenter noted that many States have launched RESEA models that rely on ES staff being cross-trained in UI to a level that they can deliver legally accurate guidance on the State's UI law and qualifying requirements. The commenter expressed concerns that allowing what they described as the privatization of services under RESEA grants would amount to privatizing key components of the UI program, a result that Congress did not intend when it expanded RESEA last year, and that is not permissible under current law. This rule does not privatize Wagner-Peyser Act services, but rather it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing approach available to them to provide these services. The Department does not agree that the proposed flexibility given to States would negatively impact the RESEA program. The RESEA program assesses the continued eligibility and reemployment needs of UI claimants for the program's targeted populations. As the Department explained in its guidance on RESEA, UI staff, Wagner-Peyser Act-funded State ES staff, WIOA staff, or other AJC staff may deliver these services. See UIPL 07–19, Fiscal Year (FY) 2019 Funding Allotments and Operating Guidance for Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) Grants (Jan. 11, 2019). Therefore, the Department currently permits non-merit staff to carry out RESEA, as many WIOA staff are not merit staff. Additionally, the Department has provided guidance to States on handling eligibility issues that are detected in the course of providing RESEA services. Similar to how the ES program administers the work test, States are required to have feedback loops from the AJC to the UI system on whether claimants reported as directed and participated in the minimum activities outlined in their reemployment plans. This ensures that any eligibility issues are referred to the UI agency and that eligibility issues are

[10] The Department also notes that the flexibilities permitted by this rule are purely optional, and the Department's monitoring and requirements of States' service delivery remain in place.

adjudicated by State merit staff, consistent with the requirement in sec. 303(a)(1) of the SSA.

The Department supports efforts that States have already made in launching RESEA programs and encourages States to continue to create the RESEA program that best fits each State's needs. The Department notes that this final rule does not require States to use non-merit staff to deliver their ES activities; instead, it gives the States the discretion to choose the staffing model that best meets each State's needs.

A commenter cited the Federal law that created the cabinet-level U.S. Department of Labor in 1913, which states that the Department's purpose is to foster, promote, and develop the welfare of working people in order to improve their working conditions and enhance opportunities for profitable employment. The commenter stated that the proposed regulations are in step with the trend to reduce civil service protections, and they are out of step with the Department's purpose. This final rule is consistent with the Department's purposes, one of which, as the commenter noted, is to enhance opportunities for profitable employment. States are in the best position to decide what is the most effective, efficient, and cost-effective way to provide services under the Wagner-Peyser Act; this final rule recognizes this and gives States the flexibility to determine what staffing model best suits the States' needs without sacrificing the quality of Wagner-Peyser Act services. Additionally, this flexibility may allow States to align the provision of Wagner-Peyser Act services with WIOA service delivery models so the programs work better together. Consistent with the Department's purpose, this will enhance opportunities for profitable employment.

One commenter suggested that adoption of the additional flexibility in the proposed rule would undermine current or existing efforts to align and integrate services provided to job seekers and employers. The commenter noted existing efforts made in the operation of the Wagner-Peyser Act since the enactment of WIOA; these efforts include the alignment of service delivery with WIOA, including cross-training of workforce programs, electronic systems, and a customer centered approach to service delivery. According to the commenter, States' efforts have resulted in more efficient offices and a more holistic approach to service delivery for customers. The Department commends the commenter's efforts to align and integrate services provided to job seekers and employers. The Department notes that this final rule does not impose any requirements on States to change their service delivery models and States may continue to use State merit staff to deliver Wagner-Peyser Act-funded labor exchange services if the State prefers this model. This final rule provides flexibility to States to consider and choose alternative staffing models if they determine it to be a more effective approach to serving the job seekers and job creators they serve.

One commenter noted that contracted services under WIOA have resulted in a high turnover rate for staff and expressed concern that this turnover may happen in the Wagner-Peyser Act-funded labor exchange services if the merit-staffing requirement were removed. The commenter expressed concern that ''clients would suffer while contractors get 'up to speed,' '' and that the networks developed over time cannot be replicated by a new service provider. The commenter also suggested that if the flexibility provided by this final rule were adopted, staffing retention would decrease and for-profit companies may generate ''false numbers.''

Another commenter noted that contracting services may result in fewer services for individuals with barriers to employment and individuals who may require more services in order to obtain employment, because the ''contractors'' may perceive these individuals to be more costly to assist. The commenter appeared to suggest that service providers would be concerned more about profit than ensuring individuals receive individually appropriate services. Additionally, some commenters noted concerns about services to rural communities, if services are contracted out, because providing services in these communities may not be as profitable in a contract-for-service system. Other commenters expressed concerns about additional costs associated with contracting services provided under the Wagner-Peyser Act, which, according to the commenters, may result in reduced services to customers.

A few commenters also noted their concerns that a service provider may have incentives inconsistent with the Wagner-Peyser Act goal of providing universal access to all job seekers. One stated that if a contracted firm is given a flat fee, there may be an incentive to ''dump clients.'' Multiple commenters also stated another potential risk associated with contracted services is if a success-related incentive is provided, service providers may screen for the cases most likely to succeed regardless of intervention and have ''little incentive to consider whether they are referring candidates of diverse nationalities and races or simply referring the most employable workers.'' One commenter stated there is a ''potentially damaging incentive'' when it comes to job placement. The commenter stated that ''contractors'' may be able to use the Worker Profiling and Reemployment Services system to identify those most likely to obtain employment and serve only those easier to serve individuals.

The Department appreciates the considerations that States will need to take into account when deciding whether to use the staffing flexibility provided in this final rule, including how services and process changes are staffed and integrated at the local level. States, as Wagner-Peyser Act grantees, are required to oversee all operations of the Wagner-Peyser Act activities, regardless of how they choose to use this final rule's additional staffing flexibility. States are responsible for the operations and performance of the State's Wagner-Peyser Act ES program, including the quality provision of services to employers and job seekers. These responsibilities continue to include the requirement at 20 CFR 652.207 to provide universal access to Wagner-Peyser Act services for all employers and job seekers to receive labor exchange services, not just those easiest to serve.

The Department considers States to be in the best position to decide what is the most productive, efficient, and cost-effective way to provide services under the Wagner-Peyser Act. This regulation does not require States to change their staffing structure for providing services under the Wagner-Peyser Act, but it provides them flexibility in how they staff the delivery of these services. As stated above, States are ultimately responsible for the operations and performance of the State's Wagner-Peyser Act program. The Department encourages States to ensure the incentives of any agreements with service providers align with the goals and requirements of the Wagner-Peyser Act.

One commenter was supportive of the proposed rule, but requested guidance related to the operations of the Wagner-Peyser Act, including on the services provided, colocation, referrals, farmworker services, and services to veterans. The Department recognizes there may be need for additional guidance on implementing staffing flexibility once this rule is finalized. The Department will continue to

provide guidance to States and the workforce system as needed through webinars, WorkforceGPS, TEGLs, and other means to ensure effective operations of Wagner-Peyser Act activities. Currently, the Department has provided guidance on the provision of career services by ES staff in TEGL No. 19–16, guidance on veterans' priority of service including in the ES in TEGL No. 10–09, and guidance on the reporting of services to farmworkers by the ES in TEGL No. 14–18.

One commenter asked how one-stop infrastructure costs and other shared one-stop operational costs will be handled if a State contracts for the delivery of its labor exchange Wagner-Peyser Act-funded services. Another commenter requested that local workforce development boards be consulted when services provided under the Wagner-Peyser Act are contracted out, in order to ensure one-stop financial commitments continue to be addressed. The Department recognizes the importance of addressing one-stop infrastructure costs and other shared operational costs for ES programs and notes that this final rule does not make any changes to obligations of WIOA required one-stop partners on infrastructure costs. The Department has provided guidance and technical assistance on the sharing and allocation of infrastructure costs among one-stop partners. All one-stop partners, including State ES programs, are still required to contribute to the infrastructure costs of AJCs. If a State's adjustments in ES staffing impact the cost allocation methods in the MOU, than the parties must modify the MOU as appropriate, consistent with 20 CFR part 678, subpart C. For more information and guidance on one-stop operations and infrastructure funding of the one-stop delivery system, see TEGL No. 16–16, One-Stop Operations Guidance for the American Job Center Network (Jan. 18, 2017), and TEGL No. 17–16 Infrastructure Funding of the One-Stop Delivery System (Jan. 18, 2017). The Department will continue to provide guidance and technical assistance as needed.

One commenter recommended that the Department require States to accept comments and consult with local workforce development boards and local elected officials if services provided under the Wagner-Peyser Act will be contracted to an entity other than a local workforce development board. The Department acknowledges that some States will want to consult with local workforce development boards and local elected officials, who have gained experience over the years with alternative staffing methods for the provision of WIOA services, as they determine the most appropriate staffing model for their State. However, the Department has chosen not to require States to accept comments or consult with local workforce development boards or local elected officials if the State implements staffing flexibility under this final rule. The flexibility in the final rule is based on the State's responsibility to oversee operations of ES activities including delivering effective services, and the State is in the best position to determine whether and how to consult with local workforce development boards.

One commenter stated that onsite monitoring of Federal programs has been reduced, and that the changes to the merit-staffing requirement may result in less oversight of the Wagner-Peyser Act regulations. The commenter noted that less monitoring may lead to less ''fidelity to impartiality and fairness in the staffing of ES activities under the administrative flexibility.'' Based on this, the commenter recommended that merit-staffing of Wagner-Peyser Act-funded staff be maintained to ensure the fair and equitable delivery of ES activities to job seekers, UI claimants, MSFWs, and employers. The commenter suggested that, if the proposed flexibility is approved, the Department should add additional regulatory language to require onsite annual Federal reviews of State adherence to unbiased and impartial delivery of employment services, and prohibition of patronage in the selection and promotion of AJC ES and UI staff members.

As explained above, States, as Wagner-Peyser Act grantees, are required to oversee all Wagner-Peyser Act operations, whether or not they decide to use alternate staffing methods, and are ultimately responsible for the operations and performance of the State's Wagner-Peyser Act program. These responsibilities continue to include the requirement at 20 CFR 652.207 to provide universal access to Wagner-Peyser Act services, and the Department expects States to ensure that services are delivered fairly and impartially.

The commenter suggested including regulatory language requiring the Department to conduct onsite annual reviews of States. The Department has not included this as a requirement in the regulation, because, consistent with 20 CFR 683.400, the Department already conducts monitoring at the State and local levels, including onsite monitoring, on a regular schedule. Additionally, States are required to conduct regular onsite monitoring of its Wagner-Peyser Act program, consistent with 20 CFR 683.410. As the Department's grantees, States must continue to oversee, provide guidance, and ensure compliance of its Wagner-Peyser Act operations and service delivery, regardless of whether they ultimately decide to take advantage of staffing flexibility or not.

Unemployment Insurance and the Wagner-Peyser Act

The Department notes that this regulation does not change the requirement in sec. 303(a)(1) of the SSA that UI services be provided by merit staff.

Several commenters opposed the proposed rule because they stated that title III of the SSA authorized the payment of Federal Unemployment Tax Act funds to administer UI benefits through public employment offices. They asserted that the integration of the financing and administration of UI and the public employment offices led to housing these two offices within the same State agency, thus, extending the merit-staffing requirements to the ES. The Department does not agree that the financing structure of the UI and ES programs extends the UI merit-staffing requirement to the ES. Section 901(a) of the SSA establishes an employment security administration account (ESA) and sec. 901(c)(1)(A) authorizes use of the funds in this account for certain enumerated purposes, including assisting the States in the administration of their UI laws and the establishment and maintenance of systems of public employment offices in accordance with the Wagner-Peyser Act. Although the financing for the ES and the State's UI program come from the same source, the ESA, the administration requirements of the two programs are not the same. Specifically, sec. 901(c)(1)(A)(ii) of the SSA provides for the establishment of public employment offices in accordance with the Wagner-Peyser Act's requirements. The Department interprets this to mean that the ESA funds used for the administration of the Wagner-Peyser Act are subject to the requirements of the Act. As explained above, the Department does not interpret the Wagner-Peyser Act to contain a statutory merit-staffing requirement. Therefore, the Department does not agree with commenters that the financing structure of the ES and UI program extends the merit-staffing requirement of sec. 303(a)(1) of the SSA for the UI program to the ES program.

The Department acknowledges that in many States, the State agency administering the UI program is the

same agency administering the ES program. The Department supports the close alignment of the ES and UI program, because the ES program plays a key role in UI, helping connect job seekers with employers so as to return UI recipients to work as soon as possible. The ES, however, does not administer the UI program. While it is reasonable for States to locate these functions within the same State agency, there is no requirement to do so. This final rule does not prohibit States from extending merit-staffing to the delivery of ES labor exchange services.

One commenter noted that this proposed rulemaking would create a staffing disconnect between the Wagner-Peyser Act and UI programs, and not having these activities performed by State merit-staff employees would complicate the administration of UI benefit eligibility. Another commenter stressed the importance of keeping the connection between UI benefits and the labor exchange system funded by the Wagner-Peyser Act. The Department does not agree that the final rule will hamper the coordination of employment services and UI claimant services. Consistent with 20 CFR 652.209, States must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Even if States choose to use a service provider for the provision of Wagner-Peyser Act-funded services, States are still responsible for fulfilling the requirements of 20 CFR 652.209. The Department considers States to be in the best position to develop business processes designed to ensure coordination between UI and the Wagner-Peyser Act in serving unemployed job seekers. The Department monitors States to ensure they are fulfilling these statutory and regulatory requirements.

Multiple commenters stated they opposed the flexibility provided in the rule because past reemployment initiatives have relied on the UI programs' ability to use ES staff, which would not be possible if ES programs were not merit-staffed. The Department recognizes that States may find value in having ES staff cross-trained and able to carry out UI functions, particularly in an economic downturn when UI workload can spike quickly. This rule does not prevent States from continuing this practice as long as any staff with responsibility for determining UI benefit eligibility are merit-staffed.

Some commenters noted a concern regarding the accuracy in the administration of employment systems by non-State-merit staff under the proposed regulation and that it may complicate efforts to reduce the error rate in the administration of UI benefits. The Department appreciates the considerations that States need to take into account when deciding whether to use the staffing flexibility this final rule provides, including ensuring using accurate information to administer UI programs. States are in the best position to ensure staffing and procedures are in place to support the accurate administration of UI benefits, including ensuring that staff carrying out the UI work test under the Wagner-Peyser Act are properly trained. Regardless of whether or not a State takes advantage of the flexibility this final rule provides, the Department will still require States to properly and efficiently administer the UI program so as to ensure accuracy of benefit payments, including reporting on the accuracy of their payments through the Benefit Accuracy Measurement (BAM) under 20 CFR part 602 and ensuring that all eligibility determinations meet the payment timeliness requirements at 20 CFR part 640.

Additionally, States, as the Wagner-Peyser Act grantees, are required to oversee all operations of the Wagner-Peyser Act activities, whether they ultimately decide to use staffing flexibility to provide these services or not. Consistent with 20 CFR 683.400, the Department will continue to conduct monitoring at the State and local levels.

A few commenters noted concerns regarding impartiality of the staff providing the services under the Wagner-Peyser Act. They expressed concern that non-merit staff would jeopardize its future as an impartial program connecting job seekers to UI benefits and job referrals. The Department appreciates the considerations that States will need to take into account when deciding whether to use staffing flexibility under this final rule, including how the program will maintain its impartiality in connecting job seekers to UI benefits and job referrals. ES staff have specific obligations in serving UI claimants and in carrying out services to job seekers, which include: Coordination and provision of labor exchange service; targeting UI claimants for job search assistance and referrals to employment; administering State UI work test requirements; and providing meaningful assistance to individuals seeking assistance in filing a UI claim. States, as the Wagner-Peyser Act grantees, are required to oversee all operations of the Wagner-Peyser Act activities, whether or not they ultimately decide to use the staffing flexibility provided by this final rule, because States are still subject to 20 CFR part 683, subpart D—Oversight and Resolution of Findings.

One commenter noted that there may be challenges stemming from data privacy requirements in having contracted staff providing ES activities, as they related to UI and TAA administration. They noted that constraints associated with confidentiality of UI and TAA data remain intact. The commenter stated that in this new proposed system, which purportedly streamlines the provision of employment services to individuals, additional layers (obtaining written informed consent, monitoring ''contractors'' to ensure compliance with the Wagner-Peyser Act requirements) would have to be added. The Department appreciates the considerations that States will need to take into account when deciding whether to use staffing flexibility, including the confidentiality concerns associated with confidential UI and TAA data. States, as the Wagner-Peyser Act grantees, are required to oversee all operations of the Wagner-Peyser Act activities, whether they ultimately decide to take advantage of the staffing flexibility provided by this final rule for these services or not. The Department has issued guidance to support States in their efforts to integrate UI and WIOA programs, including the ES program in UIPL No. 14–18, Unemployment Insurance and the Workforce Innovation and Opportunity Act. This guidance includes information related to UI confidentiality requirements found in 20 CFR part 603 and the interaction between those requirements and the operation of WIOA programs, including the ES program, and the Department encourages States to review this guidance. In addition, WIOA partner programs have experience integrating services within an AJC while maintaining the confidentiality of individual participants' data; therefore, States adopting this final rule's flexibility should be able to ensure privacy requirements are maintained.

Some commenters noted concerns regarding the administration of State UI programs, including a concern that the work-test function of UI eligibility being performed by non-State-merit staff under the proposed regulation would result in inaccuracies or process delays of UI benefits. One commenter mentioned concerns about the services provided to unemployed job seekers, including the long-term unemployed, since they are the most vulnerable job seekers. The commenter was concerned about the impact of non-merit staff being involved in the provision and

reporting of services, because negative results have serious economic impact on the individual due to it causing a delay or denial of their UI benefits. The commenter noted it is important that the individuals reporting these results be held accountable for the accuracy of their reports and stated that merit-based employees best exemplify this level of accountability.

One commenter asked what safeguards would be implemented to ensure that the work readiness test performed by ES staff for UI purposes would not be compromised and will continue to be administered fairly and equitably. The Department recognizes the importance of the connection between the UI and Wagner-Peyser Act programs, and considers the flexibility this regulation provides to States as an opportunity for States to test and improve strategies for serving unemployed individuals. To assist with this, the Department continues to place an emphasis on planning across the Wagner-Peyser Act and UI programs, through the required WIOA State Plan process. As part of that process, States are required to address strategies developed to support training and awareness across core programs and the UI program, including on the identification of UI eligibility issues and referrals to UI staff for adjudication. Additionally, as part of this process the States are required to describe strategies for providing reemployment assistance to UI claimants and other unemployed individuals. These requirements can be found at OMB Control Number 1205–0522, Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act.

Regarding the commenter's concerns about UI benefit delays or inaccuracies and what ''safeguards'' would be implemented to ensure that the work readiness test performed by ES staff for UI purposes is not compromised, the Department notes that it has been permissible for non-State merit staff to carry out similar functions, for example, reviewing compliance with State work search requirements, as part of the RESEA program and its predecessor, the REA program, for many years. The service delivery staff must be trained to identify any potential UI eligibility issues that come to their attention, or that are identified when staff are providing such services, and refer any such issues to UI merit staff to adjudicate, as appropriate, potential UI eligibility issues. Additional guidance can be found in UIPL No. 12–01, Outsourcing of Unemployment Compensation Administrative Functions, UIPL No. 12–01, Change 1, Outsourcing of Unemployment Compensation Administrative Functions–Claims Taking, and UIPL No. 14–18, Unemployment Insurance and the Workforce Innovation and Opportunity Act.

Additionally, regardless of whether or not a State takes advantage of the flexibility this final rule provides, the Department will still require States to properly and efficiently administer the UI program so as to ensure accuracy of benefit payments, including reporting on the accuracy of their payments through the BAM under 20 CFR part 602 and ensuring that all eligibility determinations meet the payment timeliness requirements at 20 CFR part 640.

§ 652.216 May the one-stop operator provide guidance to Employment Service staff in accordance with the Wagner-Peyser Act?

Section 652.216 governs how one-stop operators provide guidance to ES staff. The Department received comments on this section and responds to them below. The Department is finalizing this section as proposed.

One commenter requested the Department include a requirement in the regulation that States that continue to use State merit-staffing models must follow all applicable State personnel laws and regulations, because the commenter was concerned that not including this would potentially allow non-State entities to determine personnel actions that are solely the responsibility of the SWA. The Department recognizes that some States will continue to use State merit-staffing models. However, the Department declines to include language in the regulation instructing States to follow applicable State personnel laws and regulations because it is unnecessary; States are already bound to follow their applicable State personnel laws and regulations. The Department notes that States that choose to continue providing ES activities with State merit staff may consider developing policies or including terms in the local MOU to clearly delineate what responsibilities the one-stop operator may have or not have within the State's personnel system.

C. Part 653—Services of the Wagner-Peyser Act Employment Service System

Part 653 sets forth the principal regulations of the Wagner-Peyser Act ES concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive services on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

In part 653, the Department changed the language throughout to reflect States' new flexibility in staffing. In addition to what was proposed in the NRPM and in response to commenters' concerns, the Department made three additional notable changes in part 653: (1) Strengthening the recruitment criteria for outreach staff and ES staff at significant MSFW one-stop centers by requiring that SWAs seek such staff who speak the language of a significant portion of the MSFW population in the State; (2) strengthening the outreach staff identification card requirement by ensuring the SWAs provide outreach staff members with an identification card or other materials identifying them as representatives of the State; and (3) clarifying that the SMA may recommend the onsite review be delegated only to a SWA official.

§ 653.107 Outreach and Agricultural Outreach Plan

20 CFR 653.107 governs the outreach requirements States must carry out to ensure services are provided to MSFWs on a qualitatively equivalent and quantitatively proportionate basis as services provided to others in the ES program. The Department is finalizing the changes proposed in 20 CFR 653.107 except for the changes described below.

First, the final rule adds a new paragraph to 20 CFR 653.107(a) on SWA responsibilities. Newly added 20 CFR 653.107(a)(6) makes clear that it is the State's obligation to ensure outreach staff receive an identification card or other materials identifying them as representatives of the State. The existing regulation contains a long-standing requirement at § 653.107(b)(10) for outreach staff to be provided with, and carry and display, upon request, identification cards or other material identifying them as employees of the SWA. However, there was no corresponding requirement to issue the badge or other materials in paragraph (a) of 20 CFR 653.107 that outlines the SWA's responsibilities. Therefore, while it was always the State's responsibility to provide a badge or these other materials, the Department is adding this paragraph to § 653.107(a) for clarity.

The new paragraph will read, ''SWAs must ensure each outreach staff member is provided with an identification card

or other materials identifying them as representatives of the State.'' States can meet this requirement in a variety of ways. For example, the SWA could issue a template for service providers to use in creating the badge or identification materials. Alternatively, the State could issue identification cards to all outreach staff, including any who are employees of service providers. States may also use any other method that ensures outreach staff have a card or other materials identifying them as representatives of the State. The Department is making this clarifying change to ensure that, if a State chooses to use merit staff flexibility, this responsibility of the State is clear and all outreach staff will continue to have the same level of authority and access when conducting outreach to MSFWs.

Second, and relatedly, the Department is amending paragraph (b)(10) of § 653.107 to state that outreach staff must be provided with, carry, and display, upon request, identification cards or other material identifying them as representatives of the State. This change clarifies that the outreach staff are representatives of the State. This addition is intended to help outreach staff retain access to and trust with agricultural employers. It gives all outreach staff, whether they are a State employee or the employee of a service provider, an official identification to assuage concerns from agricultural employers who may be cautious about letting unknown representatives on their property. It will also demonstrate to MSFW customers that the outreach staff member is an official representative of the State who can be trusted to provide services and receive complaints.

Finally, in response to concerns that outreach staff of a service provider would not have the experience and characteristics necessary to serve MSFWs, the Department is strengthening the criteria that SWAs must use to seek qualified outreach staff. The current regulations require SWAs to seek outreach staff who: (1) Are from MSFW backgrounds; (2) speak a language common among MSFWs in the State; or (3) are racially or ethnically representative of the MSFWs in the service area. See 20 CFR 653.107(a)(3)(i) through (iii).

The NPRM proposed to require SWAs to ensure that outreach staff candidates were sought using the same criteria used for SMAs. Those criteria are located in § 653.108(b)(1) through (3) and are as follows: (1) Who are from MSFW backgrounds; or (2) who speak Spanish or other languages of a significant proportion of the State MSFW population; or (3) who have substantial work experience in farmworker activities.

While the Department proposed to align the hiring criteria with that of the SMA in the NPRM, in response to commenters' concerns about effective services for MSFWs, the Department has determined it could better strengthen the recruitment criteria for language requirements at § 653.107(a)(3) to mandate that SWAs must seek qualified candidates who speak the language of a significant proportion of the State MSFW population, and who are either from MSFW backgrounds or have substantial work experience in farmworker activities.

This change will help ensure outreach staff speak the language spoken by a significant proportion of the State MSFW population, and that the outreach staff sought will be from an MSFW background or have work experience in farmworker activities. The Department interprets the requirement that the outreach staff sought be from an MSFW background to mean that they or a family member have worked in farmwork as defined at 20 CFR 651.10. The Department interprets the requirement that the outreach staff sought have work experience in farmworker activities to mean that they have worked with farmworkers, either as a service provider or through other means. These changes will enable new outreach staff to connect confidently with MSFWs.

The final rule maintains the same recruitment requirements for the SMA position, a position that has a wide range of responsibilities, as those in the existing regulation. However, for positions that require daily direct interaction with farmworkers, the Department has considered the concerns of commenters and strengthened the recruitment requirements to include language, paired with either farmworker background or experience, instead of just one of these three qualifications. The Department further strongly encourages States to recruit SMAs who speak the language of a significant proportion of MSFWs in their State.

Many commenters expressed concerns about the effects that changes in the staffing requirements for outreach workers would have on MSFWs. Commenters stated that outreach staff play an important role in assisting farmworkers to access ES activities and that for many MSFWs, outreach staff are their principal source of contact with the ES system. Commenters who opposed changes in the staffing requirements cited many reasons for their opposition. Commenters stated the changes would erode the Judge Richey Court Order in *NAACP, Western Region* v. *Brennan,* No. 2010–72, 1974 WL 229 (D.D.C. Aug. 13, 1974), by allowing SWAs to use less experienced individuals with little or no knowledge of the MSFW population to conduct MSFW outreach and perform required monitoring activities.

The Department has concluded that the Judge Richey Court Order is no longer in effect. Regardless, the Department is still committed to ensuring that MSFWs have equal access to the ES program and therefore has decided to retain the key requirements of the Judge Richey Court Order to ensure that MSFWs receive ES services on a qualitatively equivalent and quantitatively proportionate basis. The Department has concluded the changes in this final rule will not undermine this commitment.

The Department will continue to hold SWAs accountable to ensure MSFWs are offered the full range of employment and training services on a basis that is qualitatively equivalent and quantitatively proportionate to the same services offered to non-MSFWs. Moreover, SWAs must continue to seek qualified outreach staff who have the characteristics identified at 20 CFR 653.107(a)(3). Lastly, if a State chooses to change its staffing arrangements, the State must ensure that new staff are trained and familiarized with the position and the corresponding duties. The SWA must continue to comply with 20 CFR 653.107(b), including the training of outreach staff as required at 20 CFR 653.107(b)(7). This will help equip new staff with the knowledge necessary to provide quality services to MSFWs and meet MSFWs' employment needs.

Commenters stated that ''outside contractors'' will lack the established relationships with employers, MSFW service agents, community ties, and extensive knowledge of the local labor market that longtime outreach staff have developed over the years. Commenters also asserted that the proposal will disrupt well-established and productive relationships. The Department acknowledges that States may want to consider the potential impact on established relationships that staffing flexibility may have as they are deciding if using staffing flexibility is the right approach for their State. The Department notes that States may choose to retain existing staff as nothing in the regulation requires States to change their current staffing for these services. As previously stated, if a State chooses to change its staffing arrangements the State must ensure that

new staff are trained and familiarized with the position and the corresponding duties. The SWA must continue to comply with 20 CFR 653.107(b), including the training of outreach staff as required at 20 CFR 653.107(b)(7).

Commenters stated that contracted outreach staff will not understand the unique needs of MSFWs. The Department does not agree with these commenters. The Department anticipates that outreach staff will be familiar with the unique needs of MSFWs because States must seek to hire outreach staff that meet the characteristics identified at 20 CFR 653.107(a), which include individuals who are from MSFW backgrounds or have significant experience in farmworker activities.

Commenters stated there will be a reduction in reports of apparent violations of employment-related laws. Commenters stated the new hires will lack the current outreach staff familiarity with relevant employment-related laws, built up through numerous training sessions and years of monitoring employer compliance. One commenter stated that, when abusive labor practices occur, farmworkers often first seek out the outreach staff to report an issue and ask for assistance. The contact outreach staff have with MSFWs becomes only more important as the number of available agricultural job opportunities through the ES system grows, and the potential for labor abuses increases.

The Department does not anticipate that there would be a reduction in reports of apparent violations of employment-related laws if States take advantage of the staffing flexibility provided in this final rule. The Department notes 20 CFR 653.107(b)(7) does not change with this final rule. This section states, in part, that outreach staff must be trained in the benefits and protections afforded MSFWs by the ES, as well as the procedure for informal resolution of complaints. The regulatory text further clarifies that trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies.

Moreover, 20 CFR 653.107(b)(6) requires that outreach staff be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the ES Office Manager for processing. Additionally, if an outreach staff member observes or receives information about apparent violations (as described in § 658.419 of this chapter), the outreach staff member must document and refer the information to the appropriate ES Office Manager. Therefore, States are required to ensure that outreach staff, even if they are not State merit staff, are trained to identify and report potential violations of the ES regulations and employment-related laws.

One commenter noted that contracted outreach staff may not be fully committed to the work, stating that public sector employees are more motivated by responsibility, growth, and feedback, and less motivated by financial rewards or earning a good salary. Another commenter asserted that the staffing flexibility will result in a deterioration of services to MSFWs. The commenter stated that, when outside entities operate one-stop centers, they only occasionally retain the former State employees who had previously held the jobs. According to this commenter, much of the turnover is due to for-profit businesses that reduce compensation and benefits to employees to cut operating costs. The commenter stated that this results in worse service and that similar results are likely if the outreach staff positions are contracted out.

Some commenters expressed support for the staffing flexibility for outreach staff. One commenter stated that the proposed rulemaking would give States flexibility to staff employment and farmworker outreach services in the most effective and efficient way, using a combination of State employees, local government employees, contracted services, and other staffing models, which could make more resources available to help employers find employees and help job seekers find work. Another commenter stated the resources allocated to worker outreach for the extension of services, while they are important and may impact a potential employee's ability to work, should be considered secondary to the effort devoted to securing gainful employment for unemployed/underemployed workers.

The Department appreciates the considerations States must take into account when considering if exercising the staffing flexibility provided in this final rule is best for their State. However, the Department notes that, regardless of who is providing the services, the State, as the Wagner-Peyser Act grantee, is responsible for ensuring the services provided to MSFWs meet the requirements of these regulations. The Department continues to require State Administrators to ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis and notes that the State Administrator has overall responsibility for SWA self-monitoring, as required by § 653.108(a). Regardless of how a State chooses to staff positions, it will be held accountable for delivering services in accordance with the ES regulations. Moreover, the Department at the national and regional levels will continue to monitor and assess SWA performance and compliance with ES regulations. See 20 CFR 658.602(j) and 658.603(a).

§ 653.108 State Workforce Agency and State Monitor Advocate Responsibilities

20 CFR 653.108 governs the obligations of the SWA and the SMA in providing ES activities to MSFWs. The Department is finalizing this section as proposed, except for the changes noted herein.

The Department is making one change to the criteria at § 653.108(b)(2), which currently provides that, among qualified candidates, SWAs must seek persons who speak Spanish or other languages of a significant proportion of the State MSFW population, by removing the reference to Spanish. As finalized, the rule reads, in part, ''[w]ho speak the language of a significant proportion of the State MSFW population.'' The Department is removing the reference to speaking Spanish, because some MSFWs do not speak Spanish and the Department wants to ensure recruitment for these positions focuses on seeking to hire individuals who can speak the language common to MSFWs in the State to facilitate communication and the provision of services.

Several commenters expressed general opposition to the proposed changes at 20 CFR 653.108. Other commenters expressed general support for the changes at § 653.108. One commenter agreed that it would be more appropriate for the SMA to be a State employee and that flexible staffing models would allow for more responsive staffing determinations and ultimately ensure that MSFWs receive ES activities that are qualitatively equivalent and quantitatively proportionate to the services provided to other job seekers. Other commenters supported the change noting their support for general staffing flexibility.

The Department notes that the proposed changes mean that States have the flexibility to staff the provision of Wagner-Peyser Act-funded services in the most effective and efficient way. Therefore, the SMA's compensation may or may not change, depending on the decision of the State. The

Department does not intend for the role of the SMA to be reduced in any way, or change beyond the staffing flexibility, given that the SMA must remain a SWA official with extensive responsibilities, identified at 20 CFR 653.108.

One commenter opposed the proposed rule because, the commenter stated, the Department's proposed changes for the SMA would reduce the SMA's prestige, influence, and likely the compensation of the SMA. The commenter stated that the Department had not provided sufficient justification for these changes. The final rule provides States with additional flexibility in the delivery of ES activities. States will be free to choose the staffing model that best fits their needs. The final rule allows the States to create a staffing model that works best for their unique circumstances, taking into consideration all relevant factors for effective implementation of ES programs, including the prestige, influence, and compensation of the SMA. The Department notes that this regulatory change, by itself, will do nothing to reduce the SMA's prestige, influence, or compensation, as States will not be obligated to make any changes to staffing requirements for ES programs. The Department further notes that the preamble to the NPRM provided substantial justification for the changes to this section.

Regarding 20 CFR 653.108(b), one commenter expressed opposition to the proposed elimination of the requirement that the SMA be State merit staff. This commenter stated that a State merit employee is required to ensure direct employment services are provided to migrant workers and employers that are qualitatively equivalent and quantitatively proportionate to the services provided to other job seekers. The Department notes that the State agency has the flexibility to choose to maintain the SMA as merit staff, if it so desires. Moreover, SWAs must continue to ensure the services provided to MSFWs are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. The Department notes it will continue to monitor SWA compliance with the ES regulations.

Regarding 20 CFR 653.108(c), where the Department proposed to remove the requirement that the SMA must have status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity, and responsibility, some commenters pointed to the settlement arising from the court order in *NAACP, W. Region.* Commenters stated that the consent decree in that case took care to ensure that SMAs were afforded unfettered access to State ES officials on matters impacting services to the MSFW population. Commenters further stated that the consent decree gave the SMA position the same degree of influence within the State agency as other senior policy positions with similar levels of tasks, complexity, and responsibility, which has been in regulations since 1980.

Commenters stated that the Department did not provide an explanation for proposing to remove the requirement and that the role of the SMA has not diminished in importance. Commenters further stated that the role of the SMA to ensure that the SWAs comply with their obligations is even more essential today than in 1980, due to the increase in H–2A workers in the country, the need to ensure that wages and working conditions offered to H–2A workers are at least equal to those prevailing in the area of employment, and that the housing offered meets Federal regulations. Lastly, they asserted that close monitoring is also required of U.S. workers referred to jobs with H–2A employers, because U.S. workers often suffer discriminatory treatment in favor of the guestworkers. In contrast, some commenters stated that they supported the proposed changes to the status of the SMA, because they support flexible staffing for activities conducted under the Monitor Advocate System.

As the Department explained in the NPRM, this change is intended to give States the flexibility to determine what is appropriate for the SMA position and is consistent with other changes proposed in the NPRM. For the SMA position in particular, which the Department deemed appropriate to maintain as a SWA official, the Department notes that States have the discretion to determine their employee's status and compensation. There is nothing in the final rule that requires States to change the status, compensation, or the influences of the SMA.

The Department also notes it is not suggesting that the role of the SMA has diminished in importance. Rather, States determine how to compensate SMAs appropriately. The SMA will continue to have the same responsibilities under these regulations, even if a State chooses to remove the SMA from its merit system, and the Department anticipates States will compensate the SMA accordingly.

In response to commenters who asserted that close monitoring is required to ensure U.S. workers who are referred to jobs with H–2A employers are not subject to discriminatory practices, the Department agrees and notes that the SMA position continues to include monitoring as a key component of the position. Moreover, SWAs must continue to ensure the services provided to MSFWs are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. The Department notes it will continue to monitor SWA compliance with the ES regulations.

Likewise, the Department acknowledges that the SMA has an important role in ensuring States and employers are complying with the requirements of the H–2A program. The SMA will continue to have the same responsibilities as the SMA had prior to this final rule. For example, the SMA will continue to be responsible for talking to workers in the field, which includes H–2A workers and U.S. workers. This ensures that the SMA will be detecting and taking action when wage and housing compliance issues emerge. Therefore, the Department does not anticipate that there will be a negative impact on States' and employers' compliance with the H–2A program requirements. The Department notes that States are still required to conduct field checks on all clearance job orders, including those job orders attached to H–2A applications, pursuant to 20 CFR 653.503.

One commenter noted that the SMA is still required to be a State employee, but that the requirement to have ''status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity, and responsibility'' was removed. The commenter explained that individuals employed in the commenter's SWA are covered by all applicable State personnel laws and regulations. Meaning, if the SMA is a State employee, by default the SMA is a State merit-staffed individual. The commenter opposed the removal of this provision and recommended it be retained, noting that the Department does not have the authority to allow States to arbitrarily determine status and compensation outside of the civil service classification system.

The Department understands the commenter's concern and clarifies that the Department is not requiring States to change how they structure their pay scales or systems. The regulation only gives States the flexibility to create the staffing arrangement that best suits each State's needs. States are free to structure the status and compensation for the

SMA position consistent with their own States' laws, regulations, and policies, as long as the SMA remains a State employee. Therefore, if keeping the SMA as a State employee means that the SMA will be in the State's civil service system, the State is free to do so. The Department has concluded no change is needed to the text of the regulation in response to this comment.

One commenter questioned whether the last sentence in 20 CFR 653.108(d)—which as proposed stated that any State that proposes less than full-time dedication must demonstrate to its Regional Administrator (RA) that the SMA function can be effectively performed with part-time ES staffing—should include ''ES.'' The commenter stated the reference to ''ES'' does not appear necessary, as this sentence is speaking specifically to the SMA function, which is a SWA official and not ES staff. The commenter recommended the sentence revert to the original text that does not include the ''ES'' reference. The Department appreciates the commenter raising this incongruence and agrees the addition of ''ES'' is not appropriate given that the requirement is referring to the SMA. Therefore, it is not correct to use the term ''ES staffing'' here. The final rule removes ''ES'' from this provision.

One commenter stated that the Department proposed to remove the 20 CFR 653.108(g)(1) requirement that SMAs ''without delay, must advise the SWA and local offices of problems, deficiencies, or improper practices in the delivery of services and protections'' to MSFWs. The commenter stated that this provision was part of the original regulations issued in 1980 to resolve the *NAACP, W. Region* litigation and that those regulations were intended to allow the SWAs and local offices to quickly correct deficiencies. The commenter stated that the Department did not indicate that this section has proven overly burdensome or ineffective, and it offers no reason for removing it. The commenter stated that the deletion is arbitrary and capricious and recommends that the language be retained as a tool to assist in effective agency self-monitoring.

The Department did not propose to remove the requirement at 20 CFR 653.108(g)(1), which requires the SMA to advise the SWA and local offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by regulations and permits the SMA to request a corrective action plan to address these deficiencies. This provision also requires the SMA to advise the SWA on means to improve the delivery of services. In the NPRM, the Department addressed its proposed changes to paragraph (g)(1), and did not propose to change the aforementioned text. Therefore, the Department clarifies that the final regulatory text retains the second and third sentences of paragraph (g)(1) as is and, as proposed in the NPRM, revises the first sentence to read: ''Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices (including efforts to provide ES staff in accordance with § 653.111, and the appropriateness of informal complaint and apparent violation resolutions as documented in the complaint logs).''

One commenter noted that the Department proposed 20 CFR 653.108(g)(3) to ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year by ES staff. The commenter noted that, instead of changing the former reference from ''State staff'' to ''ES staff,'' it should be changed from ''State staff'' to ''SWA officials.'' Otherwise, this function is given to the local level and bypasses State-level oversight. The Department agrees with the commenter that it would be more appropriate for a State employee to carry out the kind of monitoring envisioned here. The responsibilities laid out in paragraph (g) of 20 CFR 653.108 are the responsibilities of the SMA, and thus, a State employee (SWA official) should do this monitoring. Therefore, the Department will finalize 20 CFR 653.108(g)(3) to provide that all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year ''by a SWA official.''

Also in 20 CFR 653.108(g), the Department is making two additional changes to clarify the roles in onsite reviews. The first change is to 20 CFR 653.108(g)(2)(v). The proposed language for § 653.108(g)(2)(v) stated that the corrective action plan must be approved or revised by appropriate superior officials and the SMA. However, the NPRM's preamble for this provision explained that the Department was proposing to replace ''superior officials'' with ''SWA officials'' to make it clear that a State employee must approve the corrective action plan. See 84 FR 29433, 29441 (June 24, 2019). The proposed regulatory language for this provision in the NPRM inadvertently did not include this revision. The final rule's regulatory text adopts the text as described in the NPRM preamble. It states, ''The plan must be approved or revised by SWA officials and the SMA.''

The second change is to 20 CFR 653.108(g)(2)(vii). The Department proposed to revise this provision to state that the SMA may recommend the onsite review ''be delegated to an ES staff person.'' As proposed, this would permit the staff of a service provider to carry out these onsite reviews, permitting the service provider to monitor itself. The Department intends for the State to carry out monitoring of the local one-stop centers, as the State is the entity ultimately responsible for ensuring its compliance with the requirements for providing services to MSFWs. Therefore, to ensure the State is providing these services as required, the Department will require a State official to conduct these reviews. The Department is finalizing this rule with a minor change to the proposed rule text to provide that the SMA may delegate the onsite review to a SWA official (not ES staff) to clarify that the SMA may only delegate the responsibility for onsite reviews to a State employee. The final rule provides that the SMA may recommend that the review described in paragraph (g)(2) of this section be delegated to a SWA official. The Department notes that the current version of the regulatory text allows for this delegation to a responsible, professional member of the administrative staff of the SWA. As explained above, the rule as finalized will change this language to permit the delegation to a SWA official. The Department anticipates that the SMA would choose to delegate these reviews to a SWA official that is responsible and professional.

One commenter stated that at 20 CFR 653.108(o), the proposed rule referenced ''significant MSFW ES offices,'' where other sections of the regulations refer to ''significant MSFW one-stop centers.'' For consistency, the commenter suggested using ''significant MSFW one-stop centers.'' The Department agrees with the commenter that ''significant MSFW ES offices'' should be written ''significant MSFW one-stop centers,'' particularly because ''significant MSFW one-stop centers'' is a defined term in the ES regulations at 20 CFR 651.10.

§ 653.111 State Workforce Agency Staffing Requirements

20 CFR 653.111 governs the requirements for SWA staffing. The Department is finalizing this section as proposed, except for the changes described below.

The Department stated in the NPRM that it had ''serious concerns about the constitutionality of the additional, race-based and ethnicity-based hiring criteria in the current regulation.'' 84 FR at

29441. The NPRM noted that the regulations were adopted in response to a 1974 court order—now 45 years ago—and that more recent Supreme Court precedent had emphasized that a racial-classification scheme cannot last ''longer than the discriminatory effects it is designed to eliminate,'' *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 227 (1995), and that a university, by comparison, cannot impose ''a fixed quota'' or ''some specified percentage'' of a racial or ethnic group. *Fisher* v. *Texas,* 136 S. Ct. 2198, 2208 (2016). The Department's legal concerns remain, especially when commenters did not present evidence of systemic discrimination in the ES program today.

The NPRM also stated that the Department believed it could meet the needs of MSFWs without resorting to race-based or ethnicity-based criteria, and instead use the criteria employed for selecting State Monitor Advocates. The Department believes the criteria it establishes in this final rule for staffing significant MSFW ES offices, in addition to all the other safeguards and requirements in the MSFW program, will ensure that MSFWs are appropriately served.

One commenter opposed the Department's proposal to remove requirements from 653.111 that obligate States to engage in affirmative action hiring practices. The commenter stated that simply citing U.S. Supreme Court decisions that have limited the use of race-based affirmative action programs is not a legally sufficient basis to remove the affirmative action requirements. Specifically, the commenter stated that the Department had not offered evidence that the discrimination the affirmative action provisions were intended to rectify was remedied. The commenter stated they opposed the elimination of these provisions, because there continues to be systemic racism in the United States as evidenced by a wage and wealth gap between white and African American workers. The Department has the authority to remove the affirmative action race-based hiring criteria and believes it is required to remove or revise these criteria as presently constituted to comply with current law. The federal government may impose race-based classifications only if the requirement meets the strict scrutiny standard. *See Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 227 (1995). In order to meet strict scrutiny, the federal agency must demonstrate that the racial classification serves a compelling governmental interest and is narrowly tailored to further that interest. For the reasons provided in the NPRM and discussed here, the Department has serious constitutional concerns about the regulations as they have been written, and has additionally determined as a policy matter that it can meet farmworkers' needs without resorting to race-based hiring criteria. Other criteria can be just as probative, or perhaps even more so, of candidates' ability to serve MSFWs.

The ES regulations have a number of provisions intended to ensure that MSFWs' needs are met. For example, as explained above, the Department is finalizing 20 CFR 653.111 with slight changes for the recruitment criteria for outreach staff and ES staff in significant MSFW offices. The Department will require that States ensure the recruitment of ES staff who speak a language that a significant proportion of the State's MSFW population speak and who are from MSFW backgrounds or who have substantial work experience in farmworker activities. Bringing prominence to the requirement that States ensure that outreach workers and ES staff speak a language that a significant proportion of MSFWs speak will help ensure that the ES Staff directly engaging with MSFWs are best able to meet MSFWs' needs.

One commenter opposed the removal of the affirmative action hiring requirements because, the commenter stated, the proposed changes to the affirmative action hiring requirements would mean that ES staff people would no longer be subject to key, longstanding protections against racial discrimination. The Department disagrees that ES staff will no longer be subject to longstanding protections from racial discrimination. ES staff are subject to all anti-discrimination provisions applicable to the ES program. This includes the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations at 29 CFR part 38, which prohibit employment discrimination in the administration of or in connection with the Wagner-Peyser Act program based on race, color, religion, sex, national origin, age, disability, or political affiliation or belief. See, *e.g.,* 29 CFR 38.18. Additionally, under § 653.111(c), which is being finalized as proposed, SWAs remain subject to all applicable Federal laws prohibiting discrimination and protecting equal employment opportunity.

One commenter opposed the changes to the affirmative action hiring requirements because, the commenter stated, discrimination against MSFWs in the ES still exists. Specifically, the commenter explained that the affirmative action hiring goals are the result of a 1974 court order, and that while subsequent Supreme Court decisions have limited the use of certain types of race-based affirmative action programs, the Department had acknowledged that such targets still may be used until the discriminatory effects of past discrimination are eliminated. According to the commenter, for ES activities provided to MSFWs, lingering discriminatory practices warrant retention of the affirmative action plans. Although a number of commenters opposed the removal of the affirmative action provisions, neither this commenter nor any other commenters offered any evidence that lingering discriminatory practices against MSFWs still exist in the ES program. As explained above, the Department has concluded that it can effectively meet the needs of MSFWs without using hiring criteria that favor or disfavor applicants based on their race. Moreover, the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations prohibit discrimination in the Wagner-Peyser Act program based on race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation. See, *e.g.,* 29 CFR 38.5 and 38.18. Further, as noted above, SWAs remain subject to all applicable Federal laws prohibiting discrimination and protecting equal employment opportunity under 20 CFR 653.111(c), which is being finalized as proposed. States should continue to hire the individuals they determine will help best meet MSFWs' needs and will effectively carry out the requirements of the final rule.

One commenter opposed the Department's proposal to remove the affirmative action hiring requirements because, the commenter asserted, the Department did not suggest or offer any evidence that the inequities in service delivery highlighted in the *NAACP, W. Region* litigation were eradicated. The commenter stated that the ES is little more diverse than it was in 1980, and given that there are now a large number of indigenous workers from Mexico and Central America, as well as Afro-Caribbean immigrants, there is no basis for removing the affirmative action references in the regulations. Regardless, current law does not permit the Department to maintain 20 CFR 653.111's affirmative action race-based hiring requirement as presently written. The Federal government may impose race-based classifications only if they

meet the strict scrutiny standard. *Adarand,* 515 U.S. at 227. As explained in the NPRM, the Department believes the current scheme is not narrowly tailored, and it has determined as a policy matter that it can meet farmworkers' needs without resorting to race-based hiring criteria.

The Department agrees with the commenter that special provision must be made to provide effective services to MSFWs. In order to ensure that the ES staff who are working with MSFWs are able to provide the best services possible and most effectively engage with MSFWs, the Department is slightly modifying the recruitment criteria for ES staff at significant MSFW one-stop centers at 20 CFR 653.111 and outreach staff at 20 CFR 653.107. For the reasons explained in the preamble discussion of 20 CFR 653.107 and 653.108 in this final rule, in recruiting for these positions, States will be required to ensure that individuals are sought who speak a language spoken by a significant proportion of the State's MSFW population and who are from MSFW backgrounds or who have substantial work experience in farmworker activities. Increasing the recruitment focus on language ability will help ensure that MSFWs are best able to engage with the ES program.

One commenter opposed the removal of the affirmative action staffing requirements because it would, the commenter stated, reduce diversity at the SWA and adversely affect MSFWs. The commenter noted that eliminating the affirmative action hiring practices within the SWA will inevitably decrease the diversity of the SWA's workforce—and that when there is a diminished presence of minority public servants in SWAs, MSFWs inevitably suffer, because the potential for bringing together and building connections is most successful when individuals are able to connect at a very basic human level. Those connections are more likely to occur, the commenter stated, when the persons providing services are of similar ethnic, racial, linguistic, and historical backgrounds as the individuals being served. Similarly, another commenter stated that eliminating affirmative action hiring goals is misguided, because MSFWs have particular needs, beyond linguistic needs. The commenter explained that actively hiring outreach staff from farmworker communities, which are disproportionately communities of color, is one of the few ways to guarantee that outreach staff have the cultural competency, sensitivity, and humility necessary to assist MSFWS with meeting their employment needs. The Department appreciates the commenters' concerns about providing effective services to MSFWs and notes that States should continue to hire the individuals they determine will help best meet MSFWs' needs within the requirements of the final rule, including those that come from farmworker backgrounds.

Additionally, to ensure that MSFWs still have access to effective ES activities, the Department still requires that States ensure that recruitment for these positions be for individuals who are from MSFW backgrounds or who have substantial work experience in farmworker activities. Individuals with these characteristics are familiar with the array of issues MSFWs experience in their employment and have the cultural competency and sensitivity necessary to meet MSFWs' employment needs.

One commenter stated it opposed the elimination of affirmative action provisions for any aspect of the workforce, citing evidence of systemic racism that persists in the United States. It also asserted that eliminating affirmative action hiring practices within SWAs will decrease the diversity of its workforce. It stated that there are studies of States that have eliminated affirmative action over the past several years, which show that minorities working in State and local government decreased when affirmative action was dismantled. One commenter stated that, when there is a diminished presence of minority public servants in SWAs, MSFWs suffer. This commenter went on to say that building connections between job seekers and employers ''are more likely to occur when the persons providing services are of similar ethnic, racial, linguistic, and historical backgrounds as the individuals being served.''

Commenters asserted that eliminating the presence of individuals at SWAs of similar backgrounds will make it more difficult for farmworkers to benefit from the services provided by these SWAs. They referenced the particular needs of MSFWs, which go beyond linguistic needs, and may include, as one commenter noted, cultural isolation. One commenter stated that language skills, cultural awareness, and sensitivity should be top priorities for any staff working with MSFWs. Another commenter stated that actively hiring outreach staff that come from farmworker communities, which are disproportionately communities of color, is particularly needed and can guarantee that outreach staff have the cultural competency to assist farmworkers with their employment needs, and to serve both MSFWs and H–2A workers.

As stated in the NPRM, the Department is fully committed to serving all MSFWs, and to requiring that States provide useful help to MSFWs from staff who can speak their languages and understand their work environments. As described in the NPRM and above, affirmative action requirements that mandate States to hire people of certain races or ethnicities are unconstitutional. The Department continues to harbor serious concerns about the constitutionality of the hiring scheme that has been in place. And the Department has decided as a policy matter that it can meet the needs of MSFWs without using race-based and ethnicity-based hiring criteria. Instead, the Department is mandating recruitment of ES staff with the skills and background necessary to provide quality services to farmworkers, specifically language skills paired with farmworker background or experience. Accordingly, the Department is maintaining in the final rule an emphasis on hiring ES staff who speak languages spoken by MSFWs and who have an MSFW background or experience. Additionally, the Department will continue to monitor SWA's compliance with the ES regulations, which includes ensuring MSFWs have access to employment and training services in a way that meets their unique needs, and it will take appropriate action if it determines that the SWA is not meeting its obligations under these regulations.

At 20 CFR 653.111(a), the NPRM proposed that the SWA must implement and maintain a program for staffing significant MSFW one-stop centers by providing ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs, including by seeking ES staff that meet the criteria in § 653.108(b)(1) through (3). Those criteria are as follows: (1) Who are from MSFW backgrounds; or (2) who speak Spanish or other languages of a significant proportion of the State MSFW population; or (3) who have substantial work experience in farmworker activities.

In response to commenters' concerns about providing effective services to MSFWs, the Department is strengthening recruitment criteria for ES staff in significant MSFW one-stop centers. The Department is aligning the recruitment criteria with those used for outreach staff at § 653.107(a)(3)(i) and (ii), which requires SWAs to seek persons who speak the language of a significant proportion of the State

MSFW population; and (1) who are from MSFW backgrounds; or (2) who have substantial work experience in farmworker activities. Therefore, as finalized, § 653.111(a) provides, ''The SWA must implement and maintain a program for staffing significant MSFW one-stop centers by providing ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs, including by seeking ES staff that meet the criteria in § 653.107(a)(3).''

This change will ensure that recruitment for ES staff in significant MSFW one-stop centers and outreach staff will seek individuals that speak the language spoken by a significant proportion of the State MSFW population, and who are from an MSFW background—meaning that they or a family member have worked in farmwork as defined at 20 CFR 651.10—or have work experience in farmworker activities—meaning that they have worked with farmworkers, either as a service provider or through other means. These changes will enable ES staff at significant MSFW one-stop centers to better connect with and provide services to MSFWs. The Department notes that it removed the requirement for SWAs to seek persons who speak Spanish from the recruitment criteria for SMAs, staff at significant MSFW one-stop centers, and outreach staff, because some MSFWs do not speak Spanish. The Department wants to ensure recruitment for these positions focuses on seeking to hire individuals who can speak the language common to MSFWs in the State to facilitate communication and the provision of services. Additionally, the criteria to seek persons who speak the language of a significant proportion of the State MSFW population achieves the goal of ensuring that staff speak a language common to MSFWs in the State, which may be Spanish or another language.

One commenter asserted that ''privatizing these functions'' would likely result in MSFWs receiving inferior services. The Department notes that SWAs will continue to be held accountable to the same standards, regardless of how the SWAs choose to staff the provision of services. Moreover, SWAs must continue to ensure the services provided to MSFWs are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. The Department will continue to monitor SWA compliance with the ES regulations.

One commenter stated that MSFW staff are well-trained to ensure that workers are treated appropriately and that housing meets basic standards. The commenter also stated that non-governmental staff will likely lack the necessary authority to enforce the kinds of legal protections that these longstanding regulations were designed to ensure. The Department responds that, under Federal regulations, ES staff are not authorized to enforce legal protections. Rather, outreach staff must be trained to identify potential violations of the ES regulations or employment-related laws. It is then incumbent upon them to refer the potential violations to ES Office Managers or the Complaint System Representatives to attempt to resolve the issue informally. In some cases, violations may need to be logged and immediately referred to the appropriate enforcement agency.

D. Part 658—Administrative Provisions Governing the Wagner-Peyser Act Employment Service

Part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement, and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of SWAs. In part 658, the Department, among other changes, is finalizing the following proposed changes: (1) The State Administrator has overall responsibility for the Employment Service and Employment-Related Law Complaint System (Complaint System), which includes informal resolution of complaints; (2) a SWA official (as defined at § 651.10) must make determinations regarding initiation of the discontinuation of services to an employer; and (3) the RMA does not have to be a full-time position.

§ 658.501 Basis for Discontinuation of Services

Section 658.501 governs when States may or must discontinue providing services to employers. One State agency asked whether the intent of the change at 20 CFR 658.501(b) from ''The SWA may'' to ''SWA officials may'' is only to give the authority of discontinuing services to the SWA and not local ES offices. The Department clarifies that the intent of the change is to permit only SWA officials to discontinue services and it is finalizing this section as proposed.

§ 658.601 State Workforce Agency Responsibility

Section 658.601 governs the States' establishment and maintenance of a self-appraisal system. The Department is finalizing this provision with the change described below.

One commenter stated that the proposed change at 20 CFR 658.601 is incorrect. The commenter asserted that the required self-appraisal system was not reported as part of the 9002A. The commenter clarified that it has been replaced under WIOA as a narrative with aggregate State customized data in the annual narrative. The Department clarifies that § 658.601(a)(1)(ii) instructs SWAs to use a particular ETA report to compare planned numerical performance goals to actual accomplishments. Because the 9002A report is obsolete, the Department updated the language to reflect the new report that States are required to use, the WIOA Common Performance Reporting System, ETA Form 9172 (Participant Individual Record Layout).

§ 658.603 Employment and Training Administration Regional Office Responsibility

Section 658.603 governs ETA responsibilities in overseeing the States' provision of ES activities to MSFWs. The Department received comments on this section and is responding to them below. The Department is finalizing this section as proposed.

Several commenters opposed the proposed changes to § 658.603 and raised three main issues in their comments: (1) The Department did not offer an explanation for the changes; (2) the changes will erode the effectiveness of the RMA in protecting MSFWs; and (3) contracting ES staff will create the need for States and RMAs to enhance the monitoring of SWAs, because outsourced staff may have little or no experience serving farmworkers and complying with the exacting dictates of the regulations and those governing the H–2A program.

In the NPRM, the Department explained that it was proposing to remove the requirement that the RMA be full-time, because different States have different MSFW needs, and the Department has determined it is most appropriate for the ETA RA to determine whether those needs merit a full-time employee dedicated to serving one population. This gives the RA greater flexibility in how they staff their offices based on the needs of their region.

The Department does not predict there will be an erosion in the effectiveness of the RMA in protecting farmworkers. First, the RMA must continue to carry out all of the RMA duties set forth at 20 CFR 658.603(f). Second, the RA continues to have the

responsibility to regularly review and assess SWA performance and compliance with ES regulations pursuant to 20 CFR 658.603(a).[11] Through these reviews and assessments, the Department will work to guarantee that the Monitor Advocate System ensures services to farmworkers are provided on a qualitatively equivalent and quantitatively proportionate basis to the services provided to non-MSFWs, regardless of the staffing model the State selects. This will ensure that the RMA's effectiveness in protecting MSFWs is not eroded.

The Department reaffirms that the responsibilities of the State to comply with the ES regulations do not change with this final rule. Pursuant to 20 CFR 658.601(a) each SWA must establish and maintain a self-appraisal system for ES operations to determine success in reaching goals and to correct deficiencies in performance. Whether the State continues to hire merit staff in its local offices or uses a services provider, the State Administrators must ensure their SWA monitors their own compliance with ES regulations in serving MSFWs on an ongoing basis.[12] Additionally the SMAs must conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices.[13] This includes ensuring MSFWs have access to ES activities in a way that meets their unique needs. MSFWs must receive services on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs; nothing in this final rule changes that requirement. The Department notes it has extensive experience overseeing programs with different staffing models and that the SMAs, RMAs, and NMA will continue to monitor to ensure the State is providing equitable services to MSFWs, regardless of the staffing structure the SWA chooses. The Department will provide monitoring guidance for States that choose to outsource the provision of employment services.

Removing Full-Time Staffing Requirement

Commenters opposed the Department's proposal to remove the full-time staffing requirement for the RMA position at 20 CFR 658.603(f), because commenters stated the RMA position was expressly deemed to be full-time, with a wide range of specified duties. According to one commenter, the Department does not suggest that the challenges faced by the ES have so lessened since 1980 that RMA support is only needed on a part-time basis. The Department appreciates the commenter's historical context. However, the Department clarifies that it is not suggesting the RMA is only needed on a part-time basis; rather, it is at the discretion of RAs to determine how best to staff the responsibilities of their region. In the NPRM, the Department explained it was removing the requirement that the RMA position be a full-time position, recognizing different States' MSFW populations in the relevant labor markets. The Department recognizes that not all States have the same number of significant MSFW one-stop centers and that not all DOL regions have the same number of significant MSFW States, significant MSFW one-stop centers, or regional staff. Therefore, the Department is giving RAs the flexibility to analyze the MSFW needs in the relevant labor market and the available staffing to determine if a full time RMA is needed. Allowing local management to determine whether RMAs can perform their duties part-time enhances the effectiveness and cost-efficiency of ES programs. Of course, RMAs may remain full-time if the demands of their region necessitate a full-time position. Furthermore, the Department does not suggest that the challenges faced by the ES have lessened since 1980. Rather, the Department notes, as it explained in the NPRM preamble, that different States have different MSFW populations in the relevant labor market. The Department reiterates, however, that regardless of the time spent by the RMA, whether full-time or part-time, the activities and requirements of the RMA remain.

Revising Onsite Review Requirements

A couple of commenters stated that removing the mandate for the RMA to visit each State in its region at least once per year will hinder the RMA's ability to monitor the region. One commenter stated that the Department's reasoning that it is ''very challenging'' for RMAs to make harvest time visits to the States in their region is insufficient and that the challenge could only be exacerbated by a shift to part-time staffing. The commenter stated the Department offered no reason for relieving the RMA of the obligation for harvest time trips and attendance at MSFW-related meetings. Furthermore, the commenter stated, given the rapidly changing landscape of agricultural ES activities in every region in the wake of rapidly increasing numbers of H–2A applications and the accompanying challenges for the SWAs, there is no justifiable basis for diminishing regional oversight activities.

The Department understands the RMA's importance in monitoring the States for compliance with the MSFW regulations. The Department notes that even though RMAs are no longer required to visit each State once a year, the RMAs will continue to monitor all States in their region pursuant to 20 CFR 658.603(f)(1) and (2) and that nothing would prevent the RMA from visiting a State once a year (or more often) if necessary. These provisions require RMAs to review the effective functioning of the SMAs in their regions and review the performance of SWAs in providing the full range of employment services to MSFWs. As explained in the preamble to the NPRM, the Department is eliminating this requirement, because it may not be necessary for the RMA to travel to a State once a year where there is not a significant MSFW population or where the NMA has already traveled. The Department also noted in the NPRM preamble that travel to each State once a year is challenging with the limited funding available to the Department. In an effort to ensure limited funding is used most efficiently, the Department determined that RAs are in the best position to make travel decisions for their staff depending on the needs of the Region. Moreover, if it is not a significant MSFW State and the RMA has a good sense of what is happening in the State, it may not be necessary to travel there.

One commenter opposed the proposed change to remove the requirement that RMAs make harvest time visits to the States, because the commenter stated that the Department's explanation that it was very challenging to make these trips was not sufficient. The commenter explained that given the rapidly changing landscape of agricultural ES activities in each region and the increasing numbers of H–2A applications and accompanying challenges for SWAs, there is no justifiable basis for diminishing regional oversight activities.

The Department is finalizing this change because, if an RMA conducted an on-site review in a particular State it may not be necessary to return to that same State to conduct a harvest time visit. If there is not a significant MSFW population in that particular State or if the NMA already visited the State that year, such a visit may not be necessary. However, the Department notes the importance of these visits and that, if warranted, the goals of these could be

[11] 20 CFR 658.603(a) states that the RA is responsible for regularly reviewing and assessing SWA performance and ensuring their compliance with ES regulations.

[12] 20 CFR 653.108(a).

[13] 20 CFR 653.108(g)(1).

accomplished by using technology such as videoconferencing or teleconferences.

IV. Rulemaking Analyses and Notices

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866, the OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Section 3(f) of E.O. 12866 defines a ''significant regulatory action,'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistencies or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. OMB has determined that while this final rule is not an economically significant regulatory action under sec. 3(f) of E.O. 12866, it raises novel legal or policy issues and is therefore otherwise significant. Accordingly, OMB has reviewed this final rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

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

Public Comments

Commenters asserted that the economic analysis in the proposed rule left out any discussion of program effectiveness or accountability and that a determination of whether to make the proposed changes should be based on the cost-effectiveness of ES activities. One commenter stated that the proposal would impose greater costs on employers through Federal and State unemployment taxes. Commenters contended that the 2004 Jacobson study [14] demonstrates that the benefits of using merit-staffing outweigh its costs. Commenters also contended that a 2012 study of Nevada's REA program [15] found that requiring merit-based staff to conduct all program components improved outcomes. Some commenters pointed to examples of efforts in the United States to privatize (as the commenters termed it) the delivery of social service programs that resulted in cost overruns and other problems. The Department recognizes these studies and findings, but this final rule does not privatize Wagner-Peyser Act services; rather, it provides flexibility to States to offer Wagner-Peyser Act services using the best staffing models available to them to provide these services, while the Department maintains oversight and long-established criteria for proper and efficient delivery of those services. States are encouraged to consider cost-effectiveness when determining whether to use flexible staffing models for the delivery of ES activities. States are also encouraged to conduct evaluations of various service delivery models. The Department anticipates that States will choose the service delivery model that is the most cost effective in their State.

Some commenters stated that current ES programs are more cost-efficient than flexibly staffed WIOA title I programs. The Department anticipates that States will take cost information for their State into consideration when determining the most cost-effective approach to delivering ES activities. The Department did not compare the average cost per participant receiving Wagner-Peyser Act services to the average cost per participant receiving WIOA Dislocated Worker services due to the differences between the two programs. When isolating similar services provided by the Wagner-Peyser Act and the WIOA Adult and Dislocated Worker programs, the outcomes were similar. However, the cost of the totality of services available in the Dislocated Worker program is not comparable to the cost of the services available through the Wagner-Peyser Act because the Dislocated Worker program provides more comprehensive services, such as individualized career services and training services.

Some commenters stated that the economic analysis relied on too few States. As explained in the proposed rule, to estimate the potential wage savings to States, the Department surveyed a sample of States that receive various levels of Wagner-Peyser Act funding. The Department began by sorting the 54 jurisdictions by funding level (from high to low), and then divided the list into three tiers. Next, the Department selected States from each of the three tiers and sent questions to those States regarding work hours and staff occupations. The Department has determined the eight States that were selected are a representative sample that allows for a robust analysis; therefore, the Department did not survey additional States for the final rule.

Two commenters questioned why the proposed rule assumed that 50 percent of merit staff would be replaced with non-merit staff. The Department provided the following explanation in the proposed rule: ''The three pilot States have an average of 52 percent non-State-merit staff providing labor exchange services; therefore, the Department assumes a 50 percent substitution rate in its wage savings calculations.''

Some commenters stated that the economic analysis used inaccurately high wages for public sector employees, and they stated that Occupational Employment Statistics (OES) data should not be relied on to compare the salaries of government and private sector workers. However, the commenters did not provide any alternative sources for wage data. The Department continues to believe that OES is the best source available for wage data by occupation, industry, and State. No data source is perfect, but OES data are the most robust and reliable data for the Department's analysis.

One commenter pointed out that the analysis does not use the most current and relevant information available from U.S. Bureau of Labor Statistics (BLS). The Department used 2017 OES data,

[14] Louis Jacobson, Ian Petta, Amy Shimshak, and Regina Yudd, ''Evaluation of Labor Exchange Services in a One-Stop Delivery System Environment,'' prepared by Westat for the U.S. Department of Labor, Employment and Training Administration Occasional Paper 2004–09 (Feb. 2004).

[15] Marios Michaelides, Eileen Poe-Yamagata, Jacob Benus, and Dharmendra Tirumalasetti, ''Impact of the Reemployment and Eligibility Assessment (REA) Initiative in Nevada,'' prepared by IMPAQ for the U.S. Department of Labor (Jan. 2012).

which were the most current data available when the analysis was conducted. The Department has updated the data to 2018 for the analysis in this final rule.

Commenters also stated that the analysis does not compare similar workers in both sectors and that the occupational codes are not representative of the actual work done by ES staff. The Department compared the wage rates for three Standard Occupational Classification (SOC) codes: (1) SOC 11–3011 Administrative Services Managers; (2) SOC 13–1141 Compensation, Benefits, and Job Analysis Specialists; and (3) SOC 43–9061 Office Clerks, General. The Department has determined these are the most applicable SOC codes because they represent three occupational levels of ES staff: Managers or supervisors; project managers or mid-level analysts; and administrative assistants or customer service representatives. The Department maintained these three occupations in the final rule because these three occupations most closely reflect the job duties of ES staff members. Moreover, commenters did not suggest specific alternatives.

Some commenters asserted that the Department unreasonably assumed that administrative costs for contracting out services would be small. Other commenters contended that the Department failed to sufficiently account for the administrative costs of providing services through contracts. Several commenters provided examples of costs that would be incurred by States that choose to use contract-based staffing methods for the delivery of ES activities, including expenses related to developing requests for proposal, managing the bidding process, reviewing proposals, drafting contracts, and monitoring contracts. The Department recognizes that there would be costs associated with obtaining a service provider to deliver ES activities. There would also be a reduction in costs due to the diminished need for management and oversight of State employees. The Department does not have a way to reliably estimate the difference between the new administrative costs and the administrative cost savings, but addressed commenters' concerns to the extent possible by lowering the overhead rate for government workers, as described below.

Some commenters questioned why the Department doubled the wage rates to account for fringe benefits and overhead without elaboration. To address comments about administrative and overhead costs, the Department lowered the overhead rate for State government workers. In the proposed rule, the Department doubled the base wage rate for government workers and all sector workers to account for fringe benefits and overhead costs. For government workers, doubling the base wage rate reflected a fringe benefits rate of 60 percent [16] and an overhead rate of 40 percent.[17] For all sector workers, doubling the base wage rate reflected a fringe benefits rate of 44 percent [18] and an overhead rate of 56 percent.[19] In the final rule, the Department used updated ECEC data to calculate the fringe benefits rates and the results were the same: 60 percent for the government sector [20] and 44 percent for private sector workers.[21] In response to public comments, the Department reevaluated the most appropriate overhead rates to use in the final rule. The Department decided to keep the 56 percent overhead rate for new hires (represented by all sector workers) in light of the costs related to awarding funds and monitoring subrecipients, and to reduce the overhead rate for government workers from 40 percent to 17 percent [22] to reflect the lower marginal increase in overhead costs for retaining incumbent workers than hiring new workers.

Some commenters stated that the proposal would lead to increased staff turnover. The Department acknowledges that, on average, employee turnover is higher in the private sector than in the public sector. According to data from the Job Openings and Labor Turnover Survey (JOLTS) program, the separations rate for the private sector was 4.1 percent on average over the past year, while the separations rate for State and local government was 1.6 percent,[23] substantiating commenters' statements insofar as they stand for the general proposition that turnover is higher among private sector workers than government workers. While private sector workers on average may have a higher turnover rate than State employees on average, the Department is unable to quantify the potential impact on ES activities particularly, aside from reducing the overhead rate for State employees, as described above. Importantly, the Department is not requiring delivery of ES activities by private sector workers and anticipates that States will take employee turnover into consideration when assessing the cost effectiveness of various service delivery options.

Several commenters stated that the Department is unsure of the proposed rule's costs, and that this degree of uncertainty cautions against implementing the proposal. Even though the Department has determined that its cost estimates are based on the best available data, the Department acknowledges that projections of future costs and estimates based on surveys are subject to some degree of uncertainty. As such, the Department discussed in detail the areas of uncertainty in the analysis.

Wage Savings for States

As stated elsewhere in this preamble, the Department is exercising its discretion under the Wagner-Peyser Act to give States more staffing options for how they provide labor exchange services and carry out certain other ES

[16] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For State and local government workers, wages and salaries averaged $30.45 per hour worked in 2017, while benefit costs averaged $18.12, which is a benefits rate of 60 percent.

[17] U.S. Department of Health and Human Services, ''Guidelines for Regulatory Impact Analysis'' (2016), *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.* In its guidelines, HHS states, ''as an interim default, while HHS conducts more research, analysts should assume overhead costs (including benefits) are equal to 100 percent of pre-tax wages.'' HHS explains that 100 percent is roughly the midpoint between 46 and 150 percent, with 46 percent based on Employer Costs for Employee Compensation (ECEC) data that suggest benefits average 46 percent of wages and salaries, and 150 percent based on the private sector ''rule of thumb'' that fringe benefits plus overhead equal 150 percent of wages. To isolate the overhead costs from HHS's 100 percent assumption, the Department subtracted the 60 percent benefits rate calculated from ECEC data, resulting in an overhead rate of approximately 40 percent.

[18] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For private industry workers, wages and salaries averaged $23.26 per hour worked in 2017, while benefit costs averaged $10.16, which is a benefits rate of 44 percent.

[19] U.S. Department of Health and Human Services, ''Guidelines for Regulatory Impact Analysis'' (2016), *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.* To isolate the overhead costs from HHS's 100 percent assumption, the Department subtracted the 44 percent benefits rate calculated from ECEC data, resulting in an overhead rate of approximately 56 percent.

[20] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For State and local government workers, wages and salaries averaged $31.12 per hour worked in 2018, while benefit costs averaged $18.69, which is a benefits rate of 60 percent.

[21] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For private industry workers, wages and salaries averaged $23.86 per hour worked in 2018, while benefit costs averaged $10.38, which is a benefits rate of 44 percent.

[22] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[23] BLS, JOLTS program, *https://www.bls.gov/jlt.* ''Separations'' includes quits, layoffs and discharges, and other separations. Total separations is referred to as ''turnover.''

activities authorized by that Act. This flexibility will permit States to continue using State merit-staffing models to perform these functions, or to use other innovative models that best suit each State's individual needs. All 50 States, plus the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, receive funding under the Wagner-Peyser Act (54 jurisdictions total).

To estimate the wage savings to States, the Department surveyed a sample of States that receive various levels of Wagner-Peyser Act funding to obtain an approximation of staffing levels and patterns. In Program Year (PY) 2019, 17 jurisdictions received annual Wagner-Peyser Act funding between $12.4 and $77.5 million (labeled Tier 1 States in this analysis), 17 jurisdictions received funding between $6.0 million and $12.2 million (labeled Tier 2 States in this analysis), and 20 jurisdictions received funding of less than $6.0 million (labeled Tier 3 States in this analysis).[24] Eight States were surveyed by the Department and asked to provide the total number of Full-Time Equivalent (FTE) hours worked by State merit staff dedicated to delivering Wagner-Peyser Act-funded services, as well as the occupational/position title for all employees included in the FTE calculations.[25] The results ranged from 561 FTEs in California, the State that received the highest level of Wagner-Peyser Act funding in PY 2019, to 19 FTEs in Delaware, the State that received the lowest level of Wagner-Peyser Act funding in PY 2019.[26] On average among the States surveyed, 15 percent of staff funded under the Wagner-Peyser Act are managers or supervisors, 19 percent provide project management or mid-level analysis, and 66 percent provide administrative support and/or customer service.[27]

To estimate the percent of current ES positions that States would choose to re-staff under this final rule, the Department surveyed three States that participate in a Wagner-Peyser Act pilot program and already have non-State-merit staff providing labor exchange services: Colorado, Massachusetts, and Michigan. These three States were asked how many of their Wagner-Peyser Act-funded FTE hours are provided by non-State-merit staff.[28] The three pilot States have an average of 52 percent non-State-merit staff providing labor exchange services; therefore, the Department assumes a 50 percent substitution rate in its wage savings calculations. For example, the Department estimated that California would employ 280.5 FTEs (= 561 FTEs × 50%) who are neither merit-staffed nor State employees after the final rule takes effect, while Delaware would employ 9.5 such FTEs (= 19 FTEs × 50%). The FTEs are assumed to be distributed in accordance with the average staffing patterns of the surveyed States: 15 percent are managers or supervisors, 19 percent provide project management or mid-level analysis, and 66 percent provide administrative support and/or customer service.

To calculate the potential savings, median wage rates for government workers in each of the eight States were obtained from the BLS OES program.[29] The median wage rates for private sector workers are not available by State and occupation; therefore, the Department used the median wage rates for all sectors[30] as a proxy because private sector jobs constitute 85 percent of total employment.[31] The median wage rates were obtained for three SOC codes: (1) SOC 11–3011 Administrative Services Managers; (2) SOC 13–1141 Compensation, Benefits, and Job Analysis Specialists; and (3) SOC 43–9061 Office Clerks, General. To account for fringe benefits, the Department used a 60 percent benefits rate for the government sector[32] and a 44 percent rate for private sector workers.[33] To account for overhead costs, the Department used a 17 percent overhead rate[34] for the government sector and a 56 percent overhead rate[35] for new hires (represented by all sector workers). In response to public comments, the Department reduced the overhead rate for government workers from 40 percent to 17 percent in the final rule to reflect the lower marginal increase in overhead costs for retaining incumbent workers than hiring new workers.

Then the difference between the fully loaded wage rates of government workers and workers in all sectors was calculated. For example, in Ohio, the median hourly wage rate for managers/supervisors is $35.91 in the government sector and $40.84 in all sectors. Accounting for fringe benefits and overhead costs, the fully loaded median hourly rate is $63.56 in the government sector [= $35.91 + ($35.91 × 60%) + ($35.91 × 17%)] and $81.68 in all sectors [= $40.84 + ($40.84 × 44%) + ($40.84 × 56%)], a difference of $18.12 per hour. Since the fully loaded wage rate is $18.12 per hour higher in all sectors than in the government sector, Ohio would not realize a savings at the manager/supervisor level under this final rule. Likewise, Ohio would not realize a savings at the project management level because the fully loaded wage rate is $6.89 per hour higher in all sectors than in the government sector (= $49.31 for government workers—$56.20 for workers in all sectors). However, Ohio would realize a $1.23 per hour savings at the administrative support level (=

[24] State allotments are primarily based on a State's relative share of the civilian labor force and relative share of total unemployment.

[25] The eight States surveyed were California, Delaware, Idaho, Maryland, North Dakota, Ohio, Tennessee, and Utah. California, Ohio, and Maryland are in Tier 1. Tennessee and Idaho are in Tier 2. Utah, North Dakota, and Delaware are in Tier 3. In the proposed rule, Tennessee was in Tier 1 and Maryland was in Tier 2 based on PY 2018 funding levels; in the final rule, Maryland is in Tier 1 and Tennessee is in Tier 2 based on PY 2019 funding levels.

[26] The U.S. Virgin Islands and Guam received lower levels of Wagner-Peyser Act funding than Delaware. The PY 2019 allotments are available at *https://www.federalregister.gov/documents/2019/04/19/2019-07729/program-year-py-2019-workforce-innovation-and-opportunity-act-wioa-allotments-py-2019-wagner-peyser.*

[27] Three States (California, North Dakota, and Ohio) provided a breakdown of FTEs by occupation. The Department calculated an average distribution based on those three States, and then applied the distribution to the other five States. Table X reflects the data provided by California, North Dakota, and Ohio and the calculated distributions for Maryland, Tennessee, Idaho, Utah, and Delaware.

[28] SMAs will continue to be State staff, so they are not included in the calculations of this final rule.

[29] BLS OES data for government workers by State (May 2018): *https://www.bls.gov/oes/special.requests/oes_research_2018_sec_99.xlsx.* These data do not distinguish between government staff employed under a merit system and staff who are not, thus the Department could not accurately estimate of the impact of transitioning to State employees not under a merit system.

[30] BLS OES data for all sectors by State (May 2018): *https://www.bls.gov/oes/special.requests/oesm18st.zip.*

[31] In May 2018, total employment was 144,733,270 (*https://www.bls.gov/oes/current/oes_nat.htm*), with 122,999,150 jobs (85%) in the private sector (*https://www.bls.gov/oes/current/000001.htm*) and 21,734,120 jobs (15%) in the government sector (*https://www.bls.gov/oes/current/999001.htm*).

[32] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For State and local government workers, wages and salaries averaged $31.12 per hour worked in 2018, while benefit costs averaged $18.69, which is a benefits rate of 60 percent.

[33] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For private industry workers, wages and salaries averaged $23.86 per hour worked in 2018, while benefit costs averaged $10.38, which is a benefits rate of 44 percent.

[34] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[35] U.S. Department of Health and Human Services, ''Guidelines for Regulatory Impact Analysis'' (2016), *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.* To isolate the overhead costs from HHS's 100 percent assumption, the Department subtracted the 44 percent benefits rate calculated from ECEC data, resulting in an overhead rate of approximately 56 percent.

$32.71 for government workers—$31.48 for workers in all sectors).

Multiplying this fully loaded wage rate difference by the estimated number of FTEs in this occupation (34.0 FTEs) and by 2,080 hours (= 40 hours per week × 52 weeks per year) results in a potential savings for Ohio of $86,986 per year at the administrative support level (= $1.23 per hour savings × 34.0 FTEs × 2,080 hours per year). The same process was followed for the other seven States surveyed by the Department.

Next, the estimated wage savings for the States within each tier were summed. The estimated savings for the Tier 1 States of California ($950,456), Ohio ($86,986), and Maryland ($0) equals $1,037,442. The estimated savings for the Tier 2 States of Tennessee ($0) and Idaho ($9,058) equals $9,058. The estimated savings for the Tier 3 States of Utah ($106,579), North Dakota ($0), and Delaware ($13,250) equals $119,829.

The results for each tier were then multiplied by the appropriate ratio to estimate the wage savings for the entire tier. There are 17 States in Tier 1, so the estimated savings for the Tier 1 States of California, Ohio, and Maryland ($1,037,442) was multiplied by 17/3, bringing the total estimated savings to $5,878,836 per year for Tier 1. There are 17 States in Tier 2, so the estimated savings for the Tier 2 States of Tennessee and Idaho ($9,058) was multiplied by 17/2, bringing the total estimated savings to $76,996 per year for Tier 2. There are 20 States in Tier 3, so the estimated savings for the Tier 3 States of Utah, Nevada, and Delaware ($119,829) was multiplied by 20/3, bringing the total estimated savings to $798,859 per year for Tier 3.

Finally, the estimated wage savings for each tier were added together. Therefore, the total estimated savings of this final rule is $6,754,691 per year (= $5,878,836 for Tier 1 States + $76,996 for Tier 2 States + $798,859 for Tier 3 States), as shown in Table X.[36]

For purposes of E.O.s 12866 and 13771, the base wage and fringe benefit portions of these estimated savings are categorized as transfers from employees to States.

TABLE X—ESTIMATED WAGE SAVINGS PER YEAR

SOC code	Number of FTEs (rounded)	Number of FTEs with 50% substitution rate	Median wage rate for government sector	Loaded median wage rate for government sector	Median wage rate for all sectors	Loaded median wage rate for all sectors	Difference between loaded wage rates for government and all sectors	Cost savings = estimated FTE × wage rate difference × 2080 hours per year
CA:								
11–3011	117	58.5	$54.25	$96.02	$51.07	$102.14	$6.12	$0
13–1141	74	37.0	34.45	60.98	34.20	68.40	7.42	0
43–9061	370	185.0	20.58	36.43	16.98	33.96	−2.47	(950,456)
	561	280.5						
OH:								
11–3011	8	4.0	35.91	63.56	40.84	81.68	18.12	0
13–1141	7	3.5	27.86	49.31	28.10	56.20	6.89	0
43–9061	68	34.0	18.48	32.71	15.74	31.48	−1.23	(86,986)
	84	42.0						
MD:								
11–3011	12	6.0	45.04	79.2	52.08	104.16	24.44	0
13–1141	16	8.0	29.42	52.07	34.45	68.90	16.83	0
43–9061	53	26.5	17.24	30.51	15.67	31.34	0.83	0
	81	40.5						
Estimated cost savings for CA, OH, and MD								(1,037,442)
Estimated cost savings for 17 Tier 1 States								(5,878,836)
TN:								
11–3011	22	11.0	35.47	62.78	38.81	77.62	14.84	0
13–1141	28	14.0	24.63	43.60	25.74	51.48	7.88	0
43–9061	97	48.5	15.46	27.36	14.96	29.92	2.56	0
	148	74.0						
ID:								
11–3011	10	5.0	29.72	52.60	33.87	67.74	15.14	0
13–1141	13	6.5	28.11	49.75	24.54	49.08	−0.67	(9,058)
43–9061	46	23.0	15.62	27.65	14.62	29.24	1.59	0
	70	35.0						
Estimated cost savings for TN and ID								(9,048)
Estimated cost savings for 17 Tier 2 States								(76,996)
UT:								
11–3011	11	5.5	32.60	57.70	36.44	72.88	15.18	0
13–1141	14	7.0	30.42	53.84	23.26	46.52	−7.32	(106,579)
43–9061	48	24.0	14.94	26.44	14.96	29.92	3.48	0
	73	36.5						
ND:								
11–3011	6	3.0	35.43	62.71	37.75	75.50	12.79	0
13–1141	15	7.5	30.42	53.84	27.10	54.20	0.36	0
43–9061	21	10.5	18.76	33.21	18.09	36.18	2.97	0
	41	20.5						
DE:								
11–3011	3	1.5	41.33	73.15	53.61	107.22	34.07	0

[36] This rule may have other effects, which are described qualitatively here. The changes to § 653.111, regarding the staffing of significant MSFW one-stop centers, could affect States' administrative costs. The changes would revise the staffing criteria for these centers, eliminating some requirements and adding new requirements. It is unknown whether this change will reduce or increase costs, but the Department believes that the effect in either case will be small.

TABLE X—ESTIMATED WAGE SAVINGS PER YEAR—Continued

SOC code	Number of FTEs (rounded)	Number of FTEs with 50% substitution rate	Median wage rate for government sector	Loaded median wage rate for government sector	Median wage rate for all sectors	Loaded median wage rate for all sectors	Difference between loaded wage rates for government and all sectors	Cost savings = estimated FTE × wage rate difference × 2080 hours per year
13–1141	4	2.0	26.95	47.70	31.81	63.62	15.92	0
43–9061	13	6.5	16.43	29.08	14.05	28.10	−0.98	(13.250)
	19	9.5						
Estimated cost savings for UT, ND, and DE								(119,829)
Estimated cost savings for 20 Tier 3 States								(798,859)
Total estimated cost savings								(6,754,691)

Rule Familiarization Costs

Regulatory familiarization costs represent direct costs to States associated with reviewing the new regulation. The Department calculated this cost by multiplying the estimated time to review the rule by the hourly compensation of a Human Resources Manager and by the number of jurisdictions (including the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands).

The Department estimates that rule familiarization will take on average one hour by a State government Human Resources Manager who is paid a median hourly wage of $48.66.[37] The Department used a 60 percent benefits rate [38] and a 17 percent overhead rate,[39] so the fully loaded hourly wage is $86.13 [= $48.66 + ($48.66 × 60%) + ($48.66 × 17%)]. Therefore, the one-time rule familiarization cost for all 54 jurisdictions (the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands) is estimated to be $4,651 (= $86.13 × 1 hour × 54 jurisdictions).

Summary of Estimated Impacts and Discussion of Uncertainty

For all States, the expected first-year budget savings will be approximately $6,750,040 (= $6,754,691 wage savings − $4,651 regulatory familiarization costs).

This analysis assumes a 50 percent substitution rate, meaning that States will choose to re-staff certain positions with personnel other than State merit staff because these models may be more efficient and less expensive. Wage savings will vary among States based on each State's substitution rate. For some States, substitution at the managerial level may be cheaper; for other States, cost savings may be realized for administrative staff. Some States may find that private sector wage rates, for example, are more expensive than State merit staff wage rates and so choose to keep their current Wagner-Peyser Act merit staff. Under this final rule, States are not required to re-staff employment services and certain other activities under the Wagner-Peyser Act; they are given the option to do so. The purpose of this final rule is to grant States maximum flexibility in administering the Wagner-Peyser Act ES program and thereby free up resources for more and better service to employers and job seekers. Each State's wage savings will depend on the choices it makes for staffing.[40]

Non-Quantifiable Benefits

In addition to cost savings, this final rule will likely provide benefits to States and to society. The added staffing flexibility this final rule gives to States will allow them to identify and achieve administrative efficiencies. Given the estimated cost savings that will result, States will be able to dedicate more resources under the Wagner-Peyser Act to providing services to job seekers and employers. These services, which help individuals find jobs and help employers find workers, will provide economic benefits through greater employment. These resources can also provide the States with added capacity to deliver more career services, including individualized career services, which studies have shown improve employment outcomes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. Chapter 6, requires the Department to evaluate the economic impact of this final rule on small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the final rule imposes a significant economic impact on a substantial number of such small entities. The Department concludes that this final rule does not directly regulate any small entities, so any regulatory effect on small entities will be indirect. Accordingly, the Department has determined this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies

[37] BLS OES National Industry-Specific Occupational Employment and Wage Estimates, Sector 99 (May 2018): *https://www.bls.gov/oes/current/naics2_99.htm.*

[38] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* For State and local government workers, wages and salaries averaged $31.12 per hour worked in 2018, while benefit costs averaged $18.69, which is a benefits rate of 60 percent.

[39] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[40] This rule is expected to reduce deadweight loss (DWL). DWL occurs when a market operates at less than optimal equilibrium output, which happens any time the conditions for a perfectly competitive market are not met. Causes of DWL include taxes, subsidies, externalities, labor market interventions, price ceilings, and price floors. This rule removes a wage premium. The lower cost of labor may lead to an increase in the total number of labor hours purchased on the market. DWL reduction is a function of the difference between the compensation employers would be willing to pay for the hours gained and the compensation employees would be willing to accept for those hours. The size of the DWL reduction will largely depend on the elasticities of labor demand and labor supply.

with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

In accordance with the PRA, the Department submitted two information collection requests (ICRs) to OMB in concert with the publishing of the NPRM. This provided the public the opportunity to submit comments on the ICRs, either directly to the Department or to OMB. The 60-day period for the public to submit comments began with the submission of the ICRs to OMB. The Department did not receive comments on either of the two ICRs. The Department notes that the changes in the State Plan ICR are limited to the Wagner-Peyser Act program portion of that ICR and are consistent with the narrow focus of the changes in this final rule. The Department is clarifying that this joint State Plan ICR as a whole was approved by OMB in September 2019 with an expiration date of September 30, 2022. The other five (5) core programs affected by this joint State Plan ICR will not be impacted by the changes in this ICR package.

Therefore, the ICRs are being finalized consistent with this final rule.

The information collections in this final rule are summarized as follows.

Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act

Agency: DOL–ETA.

Title of Collection: Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act.

Type of Review: Revision.

OMB Control Number: 1205–0522.

Description: Under the provisions of WIOA, the Governor of each State or Territory must submit a Unified or Combined State Plan to the U.S. Department of Labor—approved jointly with the U.S. Department of Education—that fosters strategic alignment of the six core programs, which include: The Adult, Dislocated Worker, Youth, Wagner-Peyser Act ES, Adult Education and Family Literacy Act, and VR programs.

Affected Public: States, Local, and Tribal Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 38.

Estimated Total Annual Responses: 38.

Estimated Total Annual Burden Hours: 8,136.

Estimated Total Annual Other Burden Costs: $0.

Regulations Sections: DOL programs—20 CFR 652.211, 653.107(d), 653.109(d), 676.105, 676.110, 676.115, 676.120, 676.135, 676.140, 676.145, 677.230, 678.310, 678.405, 678.750(a), 681.400(a), 681.410(b)(2), 682.100, 683.115. ED programs—34 CFR parts 361, 462, and 463.

Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form

This information collection is not new. The MSFW information collected supports regulations that set forth requirements to ensure such workers receive services that are qualitatively equivalent and quantitatively proportionate to other workers. ETA is revising Form ETA–5148 to conform to the changes in this final rule. In the proposed rule, the Department listed §§ 653.107(a)(3), 653.108(g)(1) and (s)(11), and 653.111 as including proposed changes that affected the information collection. Only the final rule's changes in § 653.108(s)(2) affect the information collection. This update is reflected below.

Unrelated to this rulemaking, this information collection is currently being revised for other purposes. Those changes were the subject of a separate **Federal Register** Notice published in a **Federal Register** notice on March 7, 2019 (84 FR 8343). While this package is unrelated, the Department is incorporating the modifications to the burden estimate. Since the unrelated package contains the most current calculations for estimating the burden, the Department is aligning the calculations in this final rule to ensure future consistency.

Agency: DOL–ETA.

Title of Collection: Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form.

Type of Review: Revision.

OMB Control Number: 1205–0039.

Description: This information collection package includes the ETA Form 5148 (Services to Migrant and Seasonal Farmworkers Report) and the ETA Form 8429 (Complaint/Apparent Violation Form). SWAs must submit (pursuant to § 653.109) ETA Form 5148 quarterly to report the level of services provided to MSFWs through the one-stop centers and through outreach staff to demonstrate the degree to which MSFWs are serviced and to ensure that such services are provided on a basis that is qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. The Department requires SWAs to use ETA Form 8429 when logging and referring complaints and/or apparent violations pursuant to part 658, subpart E.

Affected Public: State and Local Governments; Individuals or Households.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 51.

Estimated Total Annual Responses: 6,572.

Estimated Total Annual Burden Hours: 8,813.

Estimated Total Annual Other Burden Costs: $361,949.

Regulations Sections: § 653.108(s)(2).

Interested parties may obtain a copy free of charge of one or more of the ICRs submitted to the OMB on the *reginfo.gov* website at *http://www.reginfo.gov/public/do/PRAMain.* From the Information Collection Review tab, select Information Collection Review. Then select Department of Labor from the Currently Under Review dropdown menu and look up the Control Number. You may also request a free copy of an ICR by contacting the person named in the **ADDRESSES** section of this preamble.

D. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism animating our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory

authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. The Department has reviewed the final rule in light of these requirements and has concluded that it is properly premised on the statutory authority given to the Secretary to set standards of efficiency for programs under the Wagner-Peyser Act, and it meets the requirements of E.O. 13132 by enhancing, rather than limiting, States' discretion in the administration of these programs.

Accordingly, the Department has reviewed this final rule and has concluded that the rulemaking has no substantial direct effects on States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Department has concluded that this final rule does not have a sufficient Federalism implication to warrant consultation with State and local officials or the preparation of a summary impact statement.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is defined in 2 U.S.C. 658, in part, as any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or the private sector.

Following consideration of these factors, the Department has concluded that the final rule contains no unfunded Federal mandates, including either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' Rather, this final rule increases State flexibility in staffing the Wagner-Peyser Act program.

F. Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed the NPRM under the terms of E.O. 13175 and DOL's Tribal Consultation Policy, and have concluded that the changes to regulatory text that are the focus of the final rule would not have tribal implications, as these changes do not have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian tribes, nor the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, no consultations with tribal governments, officials, or other tribal institutions were necessary.

List of Subjects

20 CFR Part 651

Employment, Grant programs—labor.

20 CFR Part 652

Employment, Grant programs—labor, Reporting and recordkeeping requirements.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs—labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs—labor, Reporting and recordkeeping requirements.

Accordingly, the Employment and Training Administration amends 20 CFR chapter V, parts 651, 652, 653 and 658, as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 1. The authority citation for part 651 continues to read as follows:

Authority: 29 U.S.C. 49a; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113–128, 128 Stat. 1425 (July 22, 2014).

■ 2. Amend § 651.10 by:

■ a. Removing the definition of ''Affirmative action'';

■ b. Adding a definition for ''Complaint System Representative'';

■ c. Revising the definition of ''Employment Service (ES) office'';

■ d. Adding definitions in alphabetical order for ''Employment Service (ES) Office Manager'' and ''Employment Service (ES) staff'';

■ e. Revising the definitions of ''Field checks'' and ''Field visits'';

■ f. Removing the definition of ''Local Office Manager'';

■ g. Revising the definition for ''Outreach contact'';

■ h. Adding a definition in alphabetical order for ''Outreach staff'';

■ i. Revising the definition of ''Respondent''; and

■ j. Adding in alphabetical order a definition for ''State Workforce Agency (SWA) official''.

The additions and revisions read as follows:

§ 651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

* * * * *

Complaint System Representative means the ES staff individual at the local or State level who is responsible for handling complaints.

* * * * *

Employment Service (ES) office means a site that provides Wagner-Peyser Act services as a one-stop partner program. A site must be colocated in a one-stop center consistent with the requirements of §§ 678.305 through 678.315 of this chapter.

Employment Service (ES) Office Manager means the individual in charge of all ES activities in a one-stop center.

* * * * *

Employment Service (ES) staff means individuals, including but not limited to State employees and staff of a subrecipient, who are funded, in whole or in part, by Wagner-Peyser Act funds to carry out activities authorized under the Wagner-Peyser Act.

* * * * *

Field checks means random, unannounced appearances by ES staff and/or Federal staff at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

Field visits means appearances by Monitor Advocates or outreach staff to the working and living areas of migrant and seasonal farmworkers (MSFWs), to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach staff must keep records of each such visit.

* * * * *

Outreach contact means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from outreach staff.

Outreach staff means ES staff with the responsibilities described in § 653.107(b) of this chapter.

* * * * *

Respondent means the individual or entity alleged to have committed the violation described in the complaint, such as the employer, service provider, or State agency (including a State agency official).

* * * * *

State Workforce Agency (SWA) official means an individual employed by the State Workforce Agency or any of its subdivisions.

* * * * *

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICE

■ 3. The authority citation for part 652 continues to read as follows:

Authority: 29 U.S.C. 491–2; Secs. 189 and 503, Public Law 113–128, 128 Stat. 1425 (July 22, 2014).

■ 4. Amend § 652.204 by revising the first sentence to read as follows:

§ 652.204 Must funds authorized under the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?

No, sec. 7(b) of the Wagner-Peyser Act provides that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of SWA officials as applicable, and services for groups with special needs. * * *

■ 5. Amend § 652.207 by revising paragraph (b)(3) to read as follows:

§ 652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?

* * * * *

(b) * * *

(3) In each local area, in at least one comprehensive physical center, ES staff must provide labor exchange services (including staff-assisted labor exchange services) and career services as described in § 652.206; and

* * * * *

■ 6. Amend § 652.210 by revising paragraph (b) introductory text to read as follows:

§ 652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

* * * * *

(b) ES staff must assure that:

* * * * *

■ 7. Revise § 652.215 to read as follows:

§ 652.215 Can Wagner-Peyser Act-funded activities be provided through a variety of staffing models?

Yes, Wagner-Peyser Act-funded activities can be provided through a variety of staffing models. They are not required to be provided by State merit-staff employees; however, States may still choose to do so.

■ 8. Revise § 652.216 to read as follows:

§ 652.216 May the one-stop operator provide guidance to Employment Service staff in accordance with the Wagner-Peyser Act?

(a) Yes, the one-stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a one-stop setting. As part of the local MOU described in § 678.500 of this chapter, the SWA, as a one-stop partner, may agree to have ES staff receive guidance from the one-stop operator regarding the provision of labor exchange services.

(b) The guidance given to ES staff must be consistent with the provisions of the Wagner-Peyser Act, the local MOU, and applicable collective bargaining agreements.

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

■ 9. The authority citation for part 653 continues to read as follows:

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (July 22, 2014); 29 U.S.C. chapter 4B; 38 U.S.C. part III, chapters 41 and 42.

■ 10. Amend § 653.102 by revising the third sentence to read as follows:

§ 653.102 Job information.

* * * One-stop centers must provide adequate assistance to MSFWs to access job order information easily and efficiently. * * *

■ 11. Amend § 653.103 by revising paragraphs (c) and (d) to read as follows:

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

* * * * *

(c) One-stop centers must provide MSFWs a list of available career and supportive services in their native language.

(d) One-stop centers must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

■ 12. Amend § 653.107 by:

■ a. Revising paragraphs (a)(1), (a)(2) introductory text, and (a)(3) and (4);

■ b. Adding paragraph (a)(6); and

■ c. Revising paragraphs (b) introductory text, (b)(2), (b)(4)(iv), (b)(5) through (11), and (c).

The revisions and addition read as follows:

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) * * *

(1) Each SWA must provide an adequate number of outreach staff to conduct MSFW outreach in their service areas. SWA Administrators must ensure State Monitor Advocates (SMAs) and outreach staff coordinate their outreach efforts with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.

(2) As part of their outreach, SWAs must ensure outreach staff:

* * * * *

(3) For purposes of providing and assigning outreach staff to conduct outreach duties, and to facilitate the delivery of employment services tailored to the special needs of MSFWs, SWAs must seek qualified candidates who speak the language of a significant proportion of the State MSFW population; and

(i) Who are from MSFW backgrounds; or

(ii) Who have substantial work experience in farmworker activities.

(4) In the 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, there must be full-time, year-round outreach staff to conduct outreach duties. For the remainder of the States, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff. All outreach staff must be multilingual, if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

* * * * *

(6) SWAs must ensure each outreach staff member is provided with an identification card or other materials identifying them as representatives of the State.

(b) *Outreach staff responsibilities.* Outreach staff must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Outreach staff responsibilities include:

* * * * *

(2) Outreach staff must not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer unless otherwise authorized to enter by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate State laws regarding access.

* * * * *

(4) * * *

(iv) Referral of complaints to the ES office Complaint System Representative or ES Office Manager;

* * * * *

(5) Outreach staff must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (4) of this section.

(6) Outreach staff must be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the ES Office Manager for processing in accordance with § 658.411 of this chapter. Additionally, if an outreach staff member observes or receives information about apparent violations (as described in § 658.419 of this chapter), the outreach staff member must document and refer the information to the appropriate ES Office Manager.

(7) Outreach staff must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment. While sexual harassment is the primary requirement, training also may include similar issues, such as sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. They also must be trained in the procedure for informal resolution of complaints. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA. The SMA must be given an opportunity to review and comment on the State's program.

(8) Outreach staff must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the ES Office Manager and maintained on file for at least 2 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (*e.g.,* whether a complaint was received and if the complaint or apparent violation was resolved informally or referred to the appropriate enforcement agency, and whether a request for career services was received). Outreach staff also must maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach staff access to MSFWs pursuant to paragraph (b)(2) of this section.

(9) Outreach staff must not engage in political, unionization, or anti-unionization activities during the performance of their duties.

(10) Outreach staff must be provided with, carry, and display, upon request, identification cards or other material identifying them as representatives of the State.

(11) Outreach staff in significant MSFW local offices must conduct especially vigorous outreach in their service areas.

(c) *ES office outreach responsibilities.* Each ES Office Manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The ES Office Manager and/or other appropriate staff must assess the performance of outreach staff by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach staff. The monthly reports and daily outreach logs must be made available to the SMA and Federal onsite review teams.

* * * * *

■ 13. Amend § 653.108 by revising:

■ a. Paragraphs (b) introductory text, (b)(2), (c), and (d);

■ b. The first sentence of paragraph (g)(1);

■ c. Paragraph (g)(2)(i)(D);

■ d. The second sentence of paragraph (g)(2)(v);

■ e. Paragraphs (g)(2)(vii) and (g)(3);

■ f. The first sentence of paragraph (i);

■ g. The first and second sentences of paragraph (o); and

■ h. Paragraphs (s)(2) and (3) and (9) and (11).

The revisions read as follows:

§ 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

* * * * *

(b) The State Administrator must appoint an SMA who must be a SWA official. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply. Among qualified candidates, the SWAs must seek persons:

* * * * *

(2) Who speak the language of a significant proportion of the State MSFW population; or

* * * * *

(c) The SMA must have direct, personal access, when necessary, to the State Administrator.

(d) The SMA must have ES staff necessary to fulfill effectively all of the duties set forth in this subpart. The number of ES staff positions must be determined by reference to the number of MSFWs in the State, as measured at the time of the peak MSFW population, and the need for monitoring activity in the State. The SMA must devote full time to Monitor Advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the SMA function can be effectively performed with part-time staffing.

* * * * *

(g) * * *

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices (including efforts to provide ES staff in accordance with § 653.111, and the appropriateness of informal complaint and apparent violation resolutions as documented in the complaint logs). * * *

(2) * * *

(i) * * *

(D) Complaint logs including logs documenting the informal resolution of complaints and apparent violations; and

* * * * *

(v) * * * The plan must be approved or revised by SWA officials and the SMA. * * *

* * * * *

(vii) The SMA may recommend that the review described in paragraph (g)(2) of this section be delegated to a SWA official, if and when the State Administrator finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review.

(3) Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year by a SWA official, and that, if necessary, those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.

* * * * *

(i) At the discretion of the State Administrator, the SMA may be

assigned the responsibility as the Complaint System Representative. * * *

* * * * *

(o) The SMA must ensure that outreach efforts in all significant MSFW one-stop centers are reviewed at least yearly. This review will include accompanying at least one outreach staff from each significant MSFW one-stop center on field visits to MSFWs' working, living, and/or gathering areas. * * *

* * * * *

(s) * * *

(2) An assurance that the SMA has direct, personal access, whenever he/she finds it necessary, to the State Administrator.

(3) An assurance the SMA devotes all of his/her time to Monitor Advocate functions. Or, if the SMA conducts his/her functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing.

* * * * *

(9) A summary of the training conducted for ES staff on techniques for accurately reporting data.

* * * * *

(11) For significant MSFW ES offices, a summary of the State's efforts to provide ES staff in accordance with § 653.111.

■ 14. Amend § 653.109 by revising paragraph (c) to read as follows:

§ 653.109 Data collection and performance accountability measures.

* * * * *

(c) Provide necessary training to ES staff on techniques for accurately reporting data.

* * * * *

■ 15. Revise § 653.111 to read as follows:

§ 653.111 State Workforce Agency staffing requirements.

(a) The SWA must implement and maintain a program for staffing significant MSFW one-stop centers by providing ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs, including by seeking ES staff that meet the criteria in § 653.107(a)(3).

(b) The SMA, Regional Monitor Advocate, or the National Monitor Advocate, as part of his/her regular reviews of SWA compliance with these regulations, must monitor the extent to which the SWA has complied with its obligations under paragraph (a) of this section.

(c) SWAs remain subject to all applicable Federal laws prohibiting discrimination and protecting equal employment opportunity.

■ 16. Amend § 653.501 by revising paragraphs (a) introductory text, (c)(3)(vii), and (d)(6) and (9) to read as follows:

§ 653.501 Requirements for processing clearance orders.

(a) *Assessment of need.* No ES office or SWA official may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

* * * * *

(c) * * *

(3) * * *

(vii) Outreach staff must have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(d) * * *

(6) ES staff must assist all farmworkers, upon request in their native language, to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists in their native language showing wage payment schedules, working conditions, and other material specifications of the clearance order.

* * * * *

(9) If weather conditions, over-recruitment, or other conditions have eliminated the scheduled job opportunities, the SWAs involved must make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is/are already en route or at the job site. ES staff must keep records of actions under this section.

* * * * *

■ 17. Amend § 653.502 by revising paragraph (e)(2) to read as follows:

§ 653.502 Conditional access to the Agricultural Recruitment System.

* * * * *

(e) * * *

(2) With the approval of an appropriate SWA official, remove the employer's clearance orders from intrastate and interstate clearance; and

* * * * *

■ 18. Amend § 653.503 by revising paragraphs (d) and (e) to read as follows:

§ 653.503 Field checks.

* * * * *

(d) If the individual conducting the field check observes or receives information, or otherwise has reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the individual must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as E.O.-related issues and others identified by the Department through guidance). If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e) SWA officials may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of the SWA. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment-related laws. An enforcement agency field check must satisfy the requirement for SWA field checks where all aspects of wages, hours, and working and housing conditions have been reviewed by the enforcement agency. The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 19. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (July 22, 2014); 29 U.S.C. chapter 4B.

■ 20. Amend § 658.410 by revising paragraphs (b), (c) introductory text, (c)(6), (f), (g), (h), (i), (k), and (m) to read as follows:

§ 658.410 Establishment of local and State complaint systems.

* * * * *

(b) The State Administrator must have overall responsibility for the operation of the Complaint System; this includes responsibility for the informal resolution of complaints. In the ES office, the ES Office Manager is responsible for the operation of the Complaint System.

(c) SWAs must ensure centralized control procedures are established for the processing of complaints. The ES Office Manager and the SWA Administrator must ensure a central complaint log is maintained, listing all

complaints taken by the ES office or the SWA, and specifying for each complaint:

* * * * *

(6) The action taken, and whether the complaint has been resolved, including informally. The complaint log also must include action taken on apparent violations.

* * * * *

(f) Complaints may be accepted in any one-stop center, or by a SWA, or elsewhere by outreach staff.

(g) All complaints filed through the local ES office must be handled by a trained Complaint System Representative.

(h) All complaints received by a SWA must be assigned to a trained Complaint System Representative designated by the State Administrator, provided that the Complaint System Representative designated to handle MSFW complaints must be the State Monitor Advocate (SMA).

(i) State agencies must ensure any action taken by the Complaint System Representative, including referral on a complaint from an MSFW, is fully documented and contains all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls, and all correspondence relating thereto.

* * * * *

(k) The appropriate ES staff handling a complaint must offer to assist the complainant through the provision of appropriate services.

* * * * *

(m) Follow-up on unresolved complaints. When an MSFW submits a complaint, the SMA must follow-up monthly on the handling of the complaint, and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

* * * * *

■ 21. Amend § 658.411 by:

■ a. Revising paragraph (a)(1);

■ b. Removing in paragraphs (a)(2)(iii), (a)(3) and (4), (b)(1)(ii) introductory text, (b)(1)(ii)(B) through (D), (c)(1), (d)(2)(i) and (ii), and (d)(3)(i) the words ''Complaint System representative'' wherever they appear and adding in their place ''Complaint System Representative''; and

■ c. Revising paragraphs (d)(3)(ii), (d)(5)(ii), and (d)(5)(iii)(G).

The revisions read as follows:

§ 658.411 Action on complaints.

(a) * * *

(1) Whenever an individual indicates an interest in filing a complaint under this subpart with an ES office, the SWA, or outreach staff, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing.

* * * * *

(d) * * *

(3) * * *

(ii) If resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), whether the complaint was received directly or from an ES office pursuant to paragraph (d)(2)(ii) of this section, the SWA official must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

* * * * *

(5) * * *

(ii) If SWA officials determine that the employer has not violated the ES regulations, the SWA must offer to the complainant the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(iii) * * *

(G) With the consent of the SWA official and of the State hearing official, the party who requested the hearing may withdraw the request for the hearing in writing before the hearing.

* * * * *

■ 22. Amend § 658.419 by revising paragraph (a) to read as follows:

§ 658.419 Apparent violations.

(a) If a SWA, an ES office employee, or outreach staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except as provided at § 653.503 of this chapter (field checks) or § 658.411 (complaints), the employee must document the suspected violation and refer this information to the ES Office Manager.

* * * * *

■ 23. Amend § 658.501 by revising paragraphs (a) introductory text, (b), and (c) to read as follows:

§ 658.501 Basis for discontinuation of services.

(a) SWA officials must initiate procedures for discontinuation of services to employers who:

* * * * *

(b) SWA officials may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart in paragraphs (a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 and 658.504 must be followed.

(c) If it comes to the attention of an ES office or a SWA that an employer participating in the ES may not have complied with the terms of its temporary labor certification, under, for example the H–2A and H–2B visa programs, SWA officials must engage in the procedures for discontinuation of services to employers pursuant to paragraphs (a)(1) through (8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to § 655.184 or § 655.73 of this chapter respectively for subsequent temporary labor certification.

■ 24. Amend § 658.601 by revising paragraphs (a)(1)(ii) and (a)(2)(ii) to read as follows:

§ 658.601 State Workforce Agency responsibility.

(a) * * *

(1) * * *

(ii) To appraise numerical activities/indicators, actual results as shown on the Department's ETA Form 9172, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

* * * * *

(2) * * *

(ii) To appraise these key numerical activities/indicators, actual results as shown on ETA Form 9172, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

* * * * *

■ 25. Amend § 658.602 by revising paragraphs (l), (o)(1), and (s)(2) to read as follows:

§ 658.602 Employment and Training Administration National Office responsibility.

* * * * *

(l) If the NMA finds the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other regional office official, he/she must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator, a State or Federal ES official, or other ES staff, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

* * * * *

(o) * * *

(1) Meet with the SMA and other ES staff to discuss MSFW service delivery; and

* * * * *

(s) * * *

(2) Provide technical assistance to ETA regional office and ES staff for administering the Complaint System, and any other employment services as appropriate.

* * * * *

■ 26. Amend § 658.603 by:

■ a. Revising the section heading and paragraphs (f) introductory text and (h);

■ b. Republishing paragraph (n) introductory text; and

■ e. Revising paragraphs (n)(3), (o), (r) introductory text, (r)(1), and (t).

The revisions read as follows:

§ 658.603 Employment and Training Administration regional office responsibility.

* * * * *

(f) The Regional Administrator must appoint a RMA who must carry out the duties set forth in this subpart. The RMA must:

* * * * *

(h) The Regional Administrator must ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this section are assigned.

* * * * *

(n) The RMA must review the activities and performance of the SMAs and the State monitoring system in the region, and must recommend any appropriate changes in the operation of the system to the Regional Administrator. The RMA's review must include a determination whether the SMA:

* * * * *

(3) Is making recommendations that are being consistently ignored by SWA officials. If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, any Federal officials, or other ES staff, he/she must report and recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

* * * * *

(o)(1) The RMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. He/she must advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs.

(2) The RMA also may recommend changes in ES policy or regulations, as well as changes in the funding of State Workforce Agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

* * * * *

(r) As appropriate, each year during the peak harvest season, the RMA must visit each State in the region not scheduled for an onsite review during that fiscal year and must:

(1) Meet with the SMA and other ES staff to discuss MSFW service delivery; and

* * * * *

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region, as appropriate. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

* * * * *

■ 27. Amend § 658.704 by republishing paragraph (a) introductory text and revising paragraph (a)(4) to read as follows:

§ 658.704 Remedial actions.

(a) If a SWA fails to correct violations as determined pursuant to § 658.702, the Regional Administrator must apply one or more of the following remedial actions to the SWA:

* * * * *

(4) Requirement of special training for ES staff;

* * * * *

John P. Pallasch,

Assistant Secretary for Employment and Training, Labor.

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FEDERAL REGISTER

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Part IV

The President

Proclamation 9975—National Slavery and Human Trafficking Prevention Month, 2020

Federal Register
Vol. 85, No. 3
Monday, January 6, 2020

Presidential Documents

Title 3—

The President

Proclamation 9975 of December 31, 2019

National Slavery and Human Trafficking Prevention Month, 2020

By the President of the United States of America

A Proclamation

Human trafficking erodes personal dignity and destroys the moral fabric of society. It is an affront to humanity that tragically reaches all parts of the world, including communities across our Nation. Each day, in cities, suburbs, rural areas, and tribal lands, people of every age, gender, race, religion, and nationality are devastated by this grave offense. During National Slavery and Human Trafficking Prevention Month, we reaffirm our unwavering commitment to eradicate this horrific injustice.

Trafficking crimes are perpetrated by transnational criminal enterprises, gangs, and cruel individuals. Through force, fraud, coercion, and sexual exploitation of minors, traffickers rob countless individuals of their dignity and freedom, splinter families, and threaten the safety of our communities. In all its forms, human trafficking is an intolerable blight on any society dedicated to freedom, individual rights, and the rule of law.

Human trafficking is often a hidden crime that knows no boundaries. By some estimates, as many as 24.9 million people—adults and children—are trapped in a form of modern slavery around the world, including in the United States. Human traffickers exploit others through forced labor or commercial sex, and traffickers profit from their victims' horrific suffering. The evil of human trafficking must be defeated. We remain relentless in our resolve to bring perpetrators to justice, to protect survivors and help them heal, and to prevent further victimization and destruction of innocent lives.

This year marks nearly 20 years since our Nation took decisive steps in the global fight against human trafficking by enacting the Trafficking Victims Protection Act of 2000 (TVPA) and nearly 15 years since the United States ratified the United Nations' Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). Both the TVPA and the Palermo Protocol established a comprehensive framework for combating human trafficking by establishing prevention programs, creating victim protections, and advancing prosecutions under expanded criminal statutes to usher in the modern anti-trafficking movement domestically and globally. These two measures illustrate a global consensus on the issue, and yet as a Nation we must continue to work proactively to foster a culture of justice and accountability for this horrific crime.

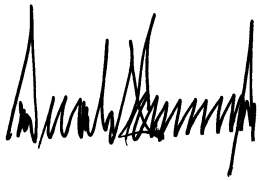
My Administration is committed to using every available resource, strengthening strategic partnerships, collaborating with State, local, and tribal entities, and by introducing innovative anti-trafficking strategies to bring the full force of the United States Government to help end this barbaric practice once and for all. In January 2019, I was proud to sign both the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act and the Trafficking Victims Protection Reauthorization Act, reaffirming our commitment to preventing trafficking in all forms.

With my resolute support, executive departments and agencies are steadfastly continuing the battle to abolish this form of modern slavery. In October 2019, the 19 members of my Interagency Task Force to Monitor and Combat Trafficking in Persons convened to highlight significant accomplishments in our sustained, whole-of-Government fight against human trafficking. The Anti-Trafficking Coordination Team (ACTeam) initiative, led by the Department of Justice, more than doubled convictions of human traffickers in ACTeam districts. Additionally, the Department of Homeland Security initiated more than 800 investigations related to human trafficking and the Department of State launched its Human Trafficking Expert Consultant Network, comprised of survivors and other subject matter experts, to inform its anti-trafficking policies and programs. The Department of Health and Human Services continues to provide funding for the National Human Trafficking Hotline, and in Fiscal Year 2018 it funded victim assistance programs that provided benefits and services to more than 2,400 victims. For the first time, the Department of Transportation committed $5.4 million in grants to the prevention of human trafficking and other crimes that may occur on buses, trains, and other forms of public transportation. The Office of Management and Budget also published new anti-trafficking guidance for Government procurement officials to more effectively combat human trafficking in Federal contracting.

The inherent dignity, freedom, and autonomy of every person must be respected and protected. Despite the progress we have made and the momentum we have built toward ending human trafficking, there is still more to be done. This month, we renew our resolve to redouble our efforts to deliver justice to all who contribute to the cruelty of human trafficking, and we will tenaciously pursue the promise of freedom for all victims of this terrible crime.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2020 as National Slavery and Human Trafficking Prevention Month, culminating in the annual observation of National Freedom Day on February 1, 2020. I call upon industry associations, law enforcement, private businesses, faith-based and other organizations of civil society, schools, families, and all Americans to recognize our vital roles in ending all forms of modern slavery and to observe this month with appropriate programs and activities aimed at ending and preventing all forms of human trafficking.

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



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