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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1484

RIN 0551–AA96

Foreign Market Development Program

AGENCY: Commodity Credit Corporation and Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the Foreign Market Development (FMD) program regulations to incorporate changes that conform the operation of the program to the requirements in the ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' (Uniform Guidance) and Federal grant-making best practices.

DATES: This rule is effective on January 9, 2020.

FOR FURTHER INFORMATION CONTACT: Curt Alt, (202) 690–4784, *curt.alt@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FMD is authorized under Section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), as amended. The FMD program regulations appear at 7 CFR part 1484.

This rule updates the FMD program regulations to bring the operation of the program into conformance with the requirements in the Uniform Guidance (2 CFR part 200). Additional changes, such as the flexibility to announce program funding opportunities on the *Grants.gov* portal and edits to bring more consistency between the Market Access Program (MAP) and FMD program regulations, are desirable to bring the administration of the program into line with the current best practices in Federal grant-making.

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act (5 U.S.C. 553) exempts rules ''relating . . . to public property, loans, grants, benefits, or contracts'' from the statutory requirements for prior notice and opportunity for comment and publication of the rule not less than 30 days before its effective date (5 U.S.C. 553(a)(2)). Accordingly, this final rule is effective when published in the **Federal Register**.

Catalog of Federal Domestic Assistance

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following the Foreign Agricultural Service (FAS) CFDA number: 10.600, Foreign Market Development Cooperator Program.

E-Government Act Compliance

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

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

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Congressional Review Act

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

Executive Order 13175

This rule has been reviewed for compliance with 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, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that require tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 7 CFR Part 1484

Agricultural commodities, Exports.

■ For the reasons discussed in the preamble, 7 CFR part 1484 is revised to read as follows:

PART 1484—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

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1484.11 Definitions.
1484.12 Participation eligibility.

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Authority: 7 U.S.C. 5623, 5662–5663.

Subpart A—General Information

§ 1484.10 General purpose and scope.

(a) This part sets forth the general terms and conditions governing the Commodity Credit Corporation's (CCC) operation of the Foreign Market Development (FMD) Cooperator program.

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

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this subpart, applies to the Cooperator program.

(3) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the Cooperator program, to the extent that these regulations do not directly conflict with the provisions of this part. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC also apply to the Cooperator program.

(c) Under the Cooperator program, CCC enters into agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, maintain, or expand foreign markets for U.S. agricultural commodities. When considering eligible nonprofit U.S. trade organizations, CCC generally gives priority to organizations that are nationwide in membership and scope and have the broadest producer representation and affiliated industry participation of the commodity being promoted. Agreements involve the promotion of agricultural commodities on a generic basis. CCC does not provide brand promotion assistance to Cooperators under this program. Agreements may not involve activities targeted directly toward consumers purchasing as individuals. Activities must contribute to the creation, maintenance, or growth of demand for U.S. agricultural commodities and must generally address long–term foreign import constraints and export growth opportunities by focusing on matters such as reducing infrastructural or historical market impediments, improving processing capabilities, modifying codes and standards, and identifying new markets or new applications or uses for the agricultural commodity in the foreign market.

(d) The Cooperator program generally operates on a reimbursement basis.

(e) CCC policy is to ensure that benefits generated by Cooperator agreements are broadly available throughout the relevant agricultural sector and no one entity gains an undue advantage or sole benefit from program activities. CCC also endeavors to enter into Cooperator agreements covering a broad array of agricultural commodity sectors. The Cooperator program is administered by the Foreign Agricultural Service (FAS) on behalf of CCC.

(f) The paperwork and recordkeeping requirements imposed by this part have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0026 for this information collection.

§ 1484.11 Definitions.

For purposes of this part the following definitions apply:

Activity means a specific foreign market development effort undertaken by a Cooperator to address a constraint or opportunity.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is a Cooperator. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: Rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, and business cards);

(2) Personnel (including, but not limited to: Salaries, benefits, payroll taxes, individual insurance, and training);

(3) Communications (including, but not limited to: Phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, and walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to: Planning, supervision, supervisory travel, teambuilding, recruiting, and hiring);

(5) Utilities (including, but not limited to: Sewer, water, and energy); and

(6) Professional services (including, but not limited to: Accounting expenses, financial services, and investigatory services).

Affiliate means any partnership, association, company, corporation, trust, or any other such party in which the Cooperator has an investment, other than a mutual fund.

Agreement means a document entered into between CCC and a Cooperator setting forth the terms and conditions of approved activities under the Cooperator program, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its FMD application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement. This letter requires a countersignature by the Cooperator before it becomes effective.

Attaché/Counselor means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Constraint means a condition in a particular country or region that needs to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

Consumer promotion means activities that are designed to directly influence consumers by changing attitudes or purchasing behaviors towards eligible commodities and that involve activities targeted directly toward consumers purchasing as individuals.

Cooperator means a nonprofit U.S. agricultural trade organization that has entered into a foreign market development agreement with CCC.

Cooperator program means the Foreign Market Development Cooperator program.

Contribution means the funds, *e.g.,* money, personnel, materials, services, facilities, or supplies, provided by an FMD Cooperator, State agency, or entities in the FMD Cooperator's industry (''U.S. industry'') in support of an approved activity as well as funds provided by the FMD Cooperator, U.S. industry, or State agency in support of related promotion activities in the markets covered by the FMD Cooperator's agreement.

Credit memo means a commercial document, also known as a credit memorandum, issued by the Cooperator to a commercial entity that owes the Cooperator a certain sum. A credit memo is used when the Cooperator owes the commercial entity a sum less than the amount the entity owes the Cooperator. The credit memo reflects an offset of the amount the Cooperator owes the entity against the amount the entity owes to the Cooperator.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Eligible commodity means any agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

Expenditure means either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

Foreign subrecipient means a foreign entity that a Cooperator works with, in accordance with this part, to promote the export of an eligible commodity under the Cooperator program.

Generic promotion means a promotion that does not involve the exclusive or predominant use of a single company name, logo, or brand name, or the brand of a U.S. agricultural cooperative, but rather promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.,* a brand owned primarily by foreign interests and being used to market an agricultural commodity in a foreign market), if the foreign brand uses the promoted eligible commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the Cooperator must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (*i.e.,* a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

Market means a country or region targeted by an activity.

Notification means a document from the Cooperator by which the Cooperator proposes to CCC changes to the activities and/or funding levels in an approved agreement and/or approval letter.

Project funds means the funds made available to a Cooperator under an agreement and authorized for expenditure in accordance with this part.

Program notice means documents that CCC issues for informational purposes. These notices are currently made available electronically through the FAS website. These notices have no legal effect. They are intended to alert Cooperators of various aspects of CCC's current administration of the FMD program. For example, CCC issues notices to alert Cooperators of applicable Federal pay scale rates and lists of economic and trade sanctions against certain foreign countries.

Program year means, unless otherwise agreed to in writing between CCC and a Cooperator, a 12-month period during which a Cooperator can undertake activities consistent with this part and its agreement and approval letter with CCC. This is also known as a project period, which in multiple year awards will be divided into budget periods.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Trade team means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

Unified Export Strategy (UES) means a holistic marketing plan that outlines an applicant's proposed foreign market development activities and requested funding under each of the FAS market development programs.

Unified Export Strategy (UES) system means an online internet system maintained by FAS through which applicants may apply to the Cooperator program and other FAS market development programs. The system is currently accessible at *https://apps.fas.usda.gov/ues/webapp/.* FAS may prescribe a different system through which applicants may apply to the FMD program and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and

fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in Title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

§ 1484.12 Participation eligibility.

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization that promotes the exports of one or more U.S. agricultural commodities, does not have a business interest in or receive remuneration from specific sales of agricultural commodities, and contributes at least 50 percent of the value of resources reimbursed by CCC for activities conducted under the agreement.

(b) CCC may require that an agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, CCC will take into account such factors as past Cooperator contribution level, previous Cooperator program funding levels, the length of time an entity participates in the program, and the entity's ability to increase its contribution level.

(c) CCC will enter into agreements only for the promotion of eligible commodities.

Subpart B—Application and Funding Allocation

§ 1484.20 Application process.

(a) *General application requirements.* CCC will periodically announce through a NOFO that it is accepting applications for participation in the Cooperator program for a specified program year. This announcement will be posted on the U.S. Government website for grant opportunities. Applications shall be submitted in accordance with the terms and requirements specified in the announcement and in this part. Currently, applicants are encouraged to submit applications through the UES system but are not required to do so.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the Cooperator program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the Cooperator program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive Cooperator program funding.

§ 1484.21 Application review and formation of agreements.

(a) *General.* CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for creating, maintaining, or expanding export markets for U.S. agricultural commodities. CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal. When considering eligible nonprofit U.S. trade organizations, CCC may weigh which organizations have the broadest producer representation and affiliated industry participation of the commodity being promoted. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(b) *Approval review criteria.* CCC follows results–oriented management principles and considers the following criteria when assessing the likelihood of success of the applications it receives, determining which applications to recommend for approval, and developing preliminary recommended funding levels:

(1) Strategic planning (25%);

(2) Program implementation (25%); and

(3) Program results and evaluation (50%).

§ 1484.22 Allocation factors.

CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's Cooperator program announcement. Generally, extensions will not be allowable.

Subpart C—Program Operations

§ 1484.30 Approval decision.

CCC will notify each applicant in writing of the final disposition of its application. CCC will send an agreement, an approval letter, and a signature card to each approved applicant. The agreement and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a Cooperator's program, including the required level of Cooperator contribution and program evaluations. An applicant that decides to accept the terms and conditions contained in the agreement and approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the agreement and approval letter and submit them to CCC. Final agreement shall occur when the agreement and approval letter are signed by both parties. The agreement, the approval letter, and this part shall establish the terms and conditions of a Cooperator agreement between CCC and the approved applicant. CCC will provide each Cooperator with IDs and passwords for the UES, as necessary. Cooperators shall protect these IDs and passwords in accordance with USDA's information technology policies. Cooperators shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

§ 1484.31 Signature cards.

The Cooperator shall designate at least two individuals in its organization to sign agreements and amendments, approval letters, reimbursement claims, and advance requests. The Cooperator shall submit the signature card signed by those designated individuals and by the Cooperator's CEO to CCC prior to the start of the program year. The Cooperator shall immediately notify CCC of any changes in signatories (*e.g.,* removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

§ 1484.32 Employment practices.

(a) A Cooperator shall enter into written contracts with all overseas employees who are paid in whole or in part with project funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A Cooperator shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S.

commercial entities in the local business community.

(c) A Cooperator may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Cooperators should consult local laws regarding currency restrictions.

§ 1484.33 Financial management.

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles and complies with the standards in 2 CFR part 200.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with this part.

(c) Each Cooperator shall retain all records relating to program activities for three calendar years from the date of submission of the final financial report and permit authorized officials of the U.S. Government to have full and complete access, for such three–year period, to such records.

(d) A Cooperator shall also maintain all documents related to employment of any employees whose salaries are reimbursed in whole or in part with project funds, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors, whether such employees or contractors are based in the United States or overseas.

(e) A Cooperator shall also maintain adequate documentation related to the proper disposition of all personal property having a useful life of over one year and an acquisition cost of $500 or more purchased by the Cooperator and for which the Cooperator is reimbursed, in whole or in part, with project funds.

(f) A Cooperator shall maintain its records of expenditures and contribution in a manner that allows it to provide information by program year, country or region, activity number, and cost category (as applicable). Such records shall include copies of:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Receipts for any other program–related expenditure in excess of a minimum level that CCC shall determine and announce in writing to all Cooperators via a program notice issued on the FAS website. Receipts for all actual meal and incidental expenses (M&IE) reimbursements must be maintained, regardless of the amount;

(3) The exchange rate used to calculate the dollar equivalent of each expenditure made in a foreign currency and the basis for such calculation;

(4) Reimbursement claims;

(5) An itemized list of claims charged to the Cooperator's FMD account;

(6) Documentation, with accompanying English translation, supporting each reimbursement claim, including evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts, purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7)(i) Each Cooperator must keep records documenting all claimed contribution, to include:

(A) Copies of invoices or receipts for expenses paid by the U.S. industry or State agency and not reimbursed by the Cooperator for the joint activity; or

(B) If invoices are not available, an itemized statement from the U.S. industry or State agency as to what costs it incurred; or

(C) If neither of the foregoing is available, a statement from the U.S. industry or State agency as to what goods and services it provided; or

(D) If none of the foregoing are available, a memo to the files of the Cooperator's estimate of what contribution was made by the U.S. industry or State agency, item by item, and the method used to assign a value to each.

(ii) Documentation supporting contribution must include the date(s), purpose, and location(s) of each activity for which cash or in–kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contribution. Cooperators must retain and make available for compliance reviews and audits documentation related to claimed contribution.

(g) Upon request, a Cooperator shall provide to CCC copies of the documents that support the Cooperator's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1484.34 Ethical conduct.

(a) A Cooperator shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A Cooperator shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(b) Neither a Cooperator nor its affiliates shall make export sales of eligible commodities covered under the terms of an agreement. Neither a Cooperator nor its affiliates shall charge a fee for facilitating an export sale. A Cooperator may collect check–off funds and membership fees that are required for membership in the Cooperator's organization.

(c) The Cooperator shall not use program activities or project funds to promote private self–interests or conduct private business, except as members of trade teams.

(d) A Cooperator shall not limit participation in its FMD activities to members of its organization. Cooperators shall ensure that their FMD–funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non–merit factors.

(e) A Cooperator shall select U.S. agricultural industry representatives to participate in activities such as trade teams or trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a Cooperator shall submit such selection criteria to CCC for approval.

(f) All Cooperators should endeavor to ensure fair and accurate fact–based advertising. Deceptive or misleading promotions may result in cancellation or termination of an agreement and recovery of CCC funds related to such promotions from the Cooperator.

(g) The Cooperator must report any actions or circumstances that may have a bearing on the propriety of program activities to the appropriate Attaché/Counselor, and the Cooperator's U.S. office shall report such actions or circumstances in writing to CCC.

§ 1484.35 Contracting procedures.

(a) Cooperators have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Cooperator. Neither CCC nor any other agency of the United States Government nor any official or employee of CCC, FAS, USDA, or the United States Government has any obligation or responsibility with respect to Cooperator contracts with third parties.

(b) Cooperators are responsible for ensuring to the greatest extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for professional and technical services paid in any part with project funds must be covered by written contracts.

(d) A Cooperator shall:

(1) Ensure that no employee, officer, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of the parties indicated in this paragraph (d)(1) participates in the review, selection, award, or administration of a contract in which such entities or their affiliates have a financial or other interest;

(2) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement;

(3) Base each solicitation for professional or technical services on a clear and accurate description of and requirements related to the services to be procured;

(4) Perform and document some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices for procurements in excess of the simplified acquisition threshold in 2 CFR 200.88; and

(5) Document the decision–making process.

§ 1484.36 Property.

(a) A Cooperator shall maintain an inventory of all personal property having a useful life of more than one year and an acquisition cost of $500 or more that was acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements, as applicable.

(b) The Cooperator shall insure all real property and equipment that was acquired, in whole or in part, with project funds at a level minimally equal to the equivalent insurance coverage for property owned by the Cooperator. The Cooperator shall safeguard such property and equipment against theft, damage, and unauthorized use. The Cooperator shall promptly report any loss, theft, or damage of such property and equipment to the insurance company.

(c) Personal property having a useful life of more than one year and an acquisition cost of $500 or more purchased by the Cooperator, and for which the Cooperator is reimbursed, in whole or in part, with project funds, that is unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Cooperator may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With CCC approval, transfer the property to other Cooperators for their activities, or to a foreign subrecipient; or

(3) Upon Attaché/Counselor approval, donate the property to a local charity, or convey the property to the Attaché/Counselor, along with an itemized inventory list and any documents of title.

(d) The Cooperator is responsible for reimbursing CCC for the value of any uninsured property at the time of the loss or theft of the property.

§ 1484.37 Federal Travel Regulations.

Except as otherwise provided in this part, travel funded by the Cooperator program shall conform to the U.S. Federal Travel Regulations (41 CFR parts 300 through 304) and 2 CFR part 200, and FMD–funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The Cooperator shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

§ 1484.38 Program income.

Program income is gross income earned by the non–Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any income generated from an activity, the expenditures for which have been wholly or partially reimbursed with FMD funds, shall be used by the FMD Cooperator in furtherance of its approved FMD activities in the program year during which the FMD funds are available for obligation by the FMD Cooperator, or must be returned to CCC. The use of such income shall be governed by this subpart. Interest earned on funds advanced by CCC is not program income. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for approved activities. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees charged must be used to offset activity expenses or returned to FAS. Such fees may not be used as profit or counted as contribution.

§ 1484.39 Changes to activities and funding.

(a) *Adding a new activity.* (1) A Cooperator may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the Cooperator shall submit a notification to CCC.

(2) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification for the transfer of funds.

(3) After receipt of the notification, CCC will inform the Cooperator via the UES system whether the requested budget is approved.

(b) *Modifying existing activities and their funding levels.* (1) A Cooperator desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than $25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(2) A Cooperator may make significant adjustments below the threshold in paragraph (b)(1) of this section to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 calendar days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(3) Notifications shall describe the activity and any changes to the activity, the existing funding level, or the proposed funding level and shall include a justification for the transfer of funds, if applicable.

Subpart D—Contribution and Reimbursements

§ 1484.50 Contribution rules.

(a) A Cooperator must use its own funds and may not use FMD program funds to pay any administrative costs of

the Cooperator's U.S. office(s), including legal fees, except as set forth in this subpart. Where the Cooperator uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contribution the Cooperator contributes to its FMD program. The contribution amount will be reflected in the award budget.

(b) In calculating the amount of contribution that it will make and the contribution that a U.S. industry or a State or local agency will make, a Cooperator program applicant may include the costs (or such prorated costs) listed under paragraph (c) of this section if:

(1) Expenditures are necessary and reasonable for accomplishment of the Cooperator's overall foreign market development program;

(2) Expenditures are not included as cost share for any other Federal award;

(3) Expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(4) The contribution is made during the period covered by the agreement.

(c) Subject to paragraph (b) of this section, as well as the cost principles in 2 CFR part 200, to the extent these principles do not directly conflict with the provisions of this part, the following are eligible contribution:

(1) Cash;

(2) Compensation paid to personnel;

(3) The cost of acquiring materials, supplies, or services;

(4) The cost of office space, including legal fees;

(5) A reasonable and justifiable proportion of general administrative costs and overhead;

(6) Payments for indemnity and fidelity bond expenses;

(7) The cost of business cards that target a foreign audience;

(8) Fees for office parking;

(9) The cost of subscriptions to publications that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the Cooperator's program;

(10) The cost of activities conducted overseas;

(11) Credit card fees;

(12) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with agreement or regulatory requirements;

(13) The cost of giveaways, awards, prizes, and gifts;

(14) The cost of product samples;

(15) Fees for participating in U.S. Government sponsored or endorsed export promotion activities;

(16) The cost of air and local travel in the United States related to a foreign market development effort;

(17) Transportation and shipping costs;

(18) The cost of displays and promotional materials;

(19) Advertising costs;

(20) Reasonable travel costs and expenses related to undertaking a foreign market development activity;

(21) The costs associated with trade shows, seminars, and STRE conducted in the United States, and costs associated with entertainment conducted in the United States where such entertainment costs have a programmatic purpose and are authorized in the agreement and/or approval letter or are authorized by prior written approval of CCC;

(22) Product research that is undertaken to benefit an industry and has a specific export application;

(23) Consumer promotions; and

(24) The cost of any activity expressly listed as reimbursable in this part.

§ 1484.51 Ineligible contribution.

(a) The following are not eligible contribution:

(1) Any portion of salary or compensation of an individual who is the target of a promotional activity;

(2) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Cooperator's organization;

(3) Any land costs other than allowable costs for office space;

(4) The cost of refreshments and related equipment provided to office staff;

(5) The cost of insuring articles owned by private individuals;

(6) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(7) The cost of product development or product modifications;

(8) Slotting fees or similar sales expenditures;

(9) Funds, services, capital goods, or personnel provided by any U.S. Government agency;

(10) The value of any services generated by a Cooperator or third party that involve no expenditure by the Cooperator or third party, *e.g.,* free publicity;

(11) Membership fees in clubs and social organizations; and

(12) Any expenditure for an activity prior to CCC's approval of that activity.

(b) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included by the Cooperator as eligible contribution.

§ 1484.52 Reimbursement rules.

(a) A Cooperator may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the performance of an approved activity; and

(2) The Cooperator has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section and § 1484.53, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, including in print, electronic media, billboards, or posters. Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and similar point of sale materials;

(3) Direct mail advertising;

(4) Food service promotions, product demonstrations to the trade, and distribution of product samples (but not the purchase of the product samples);

(5) Temporary displays and rental of space for temporary displays;

(6) Subject to paragraph (b)(7) of this section, non–travel expenditures, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials, associated with retail and trade exhibits and shows, whether held outside or inside the United States. However, non–travel expenditures associated with retail and trade exhibits and shows held inside the United States are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Cooperator has not participated in within the last three calendar years using funds from a source other than FMD. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(7) Where USDA has sponsored or endorsed a U.S. pavilion at a retail or trade exhibit or show, whether held outside or inside the United States, project funds may be used to reimburse the travel and/or non–travel expenditures of only those Cooperators located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this paragraph (b)(7), on a case by case basis, where the trade show is segregated into product pavilions or a company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the Cooperator in writing;

(8) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States, including space rental, equipment rental, and duplication of seminar materials;

(9) Production and distribution of publications;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to Cooperators via a program notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the target audience purchasing a good or service to receive the promotional item;

(12) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to U.S. citizen employees or U.S. citizen contractors stationed overseas, provided such benefits are granted under established written policies, subject to the limitation that CCC shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15, Step 10 salary for U.S. Government employees; or

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(13) Foreign transfer, temporary lodging, and post hardship differential allowances for U.S. citizen employees, provided such benefits are granted under established written policies;

(14) Approved salaries or compensation for non–U.S. citizen employees and non–U.S. contractors stationed overseas. Generally, CCC will not reimburse any portion of a non–U.S. citizen employee's compensation that exceeds the compensation prescribed for the most comparable position in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, if the local FSN salary plan is inappropriate, a Cooperator may request a higher level of reimbursement for a non–U.S. citizen in accordance with the annual program announcement;

(15) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross GS–15, Step 10 salary for U.S. Government employees in effect on the date the fee is earned, unless a bidding process revels that such a contractor is not available at or below that salary rate;

(16) A retroactive salary adjustment for non–U.S. citizen staff employees or non–U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change;

(17) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(18) Overtime paid to clerical staff of approved FMD–funded overseas offices;

(19) Fees for professional and consultant services;

(20) Subject to paragraph (b)(7) of this section, international travel expenditures, including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), except that if the activity is participation in a retail or trade exhibit or show held inside the United States, international travel expenditures are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Cooperator has not participated in within the last three calendar years using funds from a source other than FMD. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are: A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products, and an international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(i) CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the Cooperator shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the Cooperator shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim;

(ii) In very limited circumstances, the Cooperator may be reimbursed for air travel up to the business class rate (*i.e.,* a premium class rate other than the first-class rate). Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the Cooperator receives written documentation to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; or

(C) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time and ending with the scheduled arrival time, including stopovers and changes of planes, exceeds 14 hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non–work days (*e.g.,* weekends, holidays, personal leave, etc.) immediately following the date of arrival. A stopover is the time a traveler spends at an airport, other than the

originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel; and

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses;

(21) Automobile mileage at the local U.S. Embassy rate, or rental cars while in travel status;

(22) Subject to § 1484.37 and paragraph (b)(7) of this section, other allowable expenditures while in travel status;

(23) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the Cooperator's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office;

(24) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for capital goods that have an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, and personal digital assistants);

(25) Premiums for health or accident insurance or other benefits for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies;

(26) Accident liability insurance premiums for facilities used jointly with third party participants for Cooperator program activities, or such insurance premiums for Cooperator program–funded travel of non–Cooperator personnel, provided the types and extent and cost of coverage are in accordance with the Cooperator's policy and sound business practice;

(27) Market research, including research to determine the types of products that are desired in a market;

(28) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

(29) Legal fees to obtain advice on the host country's labor laws;

(30) Employment agency fees;

(31) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. Cooperators are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners, and receptions. Cooperators may exceed Embassy guidelines only when they have received written authorization from the FAS Attaché/Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. Cooperators must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the Cooperator should provide, in its request for approval, the basis for determining its proposed expenses;

(32) Travel costs for dependents as allowed in 2 CFR part 200 (*e.g.,* for travel of duration of six months or more with prior approval of CCC);

(33) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months;

(34) Approved demonstration projects;

(35) Purchase of trade and business periodicals containing material related to market development activities for use by overseas staffs;

(36) Training expenses in the United States for FSNs;

(37) Language training for U.S. citizen employees at the foreign post of assignment;

(38) Forward year financial obligations required by local law or custom, such as severance pay, attributable to employment of foreign nationals, or forfeiture of rent or deposits, attributable to the closure of an office;

(39) Rental or lease expenditures for storage space for program–related materials;

(40) Shipment of samples or other program materials from the United States to foreign countries;

(41) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees prorated at the proportion of program–related airtime to total airtime;

(42) Non–travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(43) An audit of a Cooperator as required by 2 CFR part 200, subpart F, if the Cooperator program is the Cooperator's largest source of Federal funding;

(44) The translation of written materials as necessary to carry out approved activities;

(45) Business cards that target a foreign audience;

(46) Expenditures associated with developing, updating, and servicing websites on the internet that: Contain a message related to exporting or international trade, include a discernible ''link'' to the FAS/Washington homepage or an FAS overseas homepage, and have been specifically approved by FAS. Expenditures related to websites or portions of websites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for websites that include any sort of ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(47) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(48) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities;

(49) Membership fees in professional, industry–related organizations; and

(50) Contracts with U.S.–based organizations when the only contracted service such organizations provide to a Cooperator is carrying out a specific market promotion activity in the United States directed to a foreign audience (*e.g.,* a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be

reimbursable as a direct promotional expense. If a U.S.–based organization provides administrative services to the Cooperator's domestic home office during a program year, any direct promotional services such organization provides to the Cooperator, whether for the Cooperator's domestic or overseas offices, during the same program year are not reimbursable.

§ 1484.53 Expenditures not reimbursed under the Cooperator program.

(a) CCC will not reimburse unreasonable expenditures or any cost of:

(1) Expenses, fines, settlements, judgements, or payments relating to legal suits, challenges, or disputes, except as otherwise allowed in 2 CFR part 200;

(2) Product development, product modification, or product research;

(3) Product samples;

(4) Slotting fees or similar sales expenditures;

(5) The purchase, construction, or lease of space for permanent, non-mobile displays, *i.e.,* displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case, if the Cooperator sought and received prior written approval from CCC of such construction or purchase;

(6) Rental, lease, or purchase of warehouse space, except for storage space for program-related materials;

(7) Office parking fees;

(8) Coupon redemption or price discounts;

(9) Refundable deposits or advances;

(10) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of the limitation that CCC will determine. Such determination will be announced in writing via a program notice issued on FAS' website;

(11) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;

(12) The purchase, lease (except for use in authorized travel status), or repair of motor vehicles;

(13) Travel of applicants for employment interviews;

(14) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(15) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future agreement or regulatory compliance;

(16) Any arrangement that has the effect of reducing the selling price of an agricultural commodity;

(17) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(18) Goods, services, and salaries of personnel provided by a third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the Cooperator;

(25) Credit card fees;

(26) Refreshments, or related equipment, for office staff;

(27) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the United States, belonging to U.S. citizen employees;

(28) Home office domestic administrative expenses, including communication costs;

(29) Payment of a U.S. or foreign employee's or contractor's share of personal taxes, except where a foreign country's laws require the Cooperator to pay such employee's or contractor's share;

(30) STRE expenses incurred in the United States, except as otherwise provided in § 1484.52(b)(31);

(31) Entertainment (*e.g.,* amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events);

(32) Functions (including receptions and meals at Cooperator staff conferences) at which target groups, such as members of the overseas trade, opinion leaders, foreign government officials, and other similar groups, are not present;

(33) Promotions directed at consumers purchasing in their individual capacity; and

(34) Any expenditure made for an activity prior to CCC's approval of that activity.

(b) The CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

(c) CCC will reimburse for expenditures made after the conclusion of the program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(d) A Cooperator shall not use project funds for any activity, or any expenses incurred by the Cooperator prior to the date specified in the approval letter or after the date the agreement is suspended or terminated, except as otherwise permitted by CCC.

§ 1484.54 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Cooperator may submit claims for reimbursement of eligible expenses incurred in implementing FMD activities, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Cooperator will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) All claims for reimbursement shall be submitted by the FMD Cooperator's U.S. office to CCC. CCC will make all payments to Cooperators in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(c) Cooperators will be authorized to submit requests for reimbursement or advance at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(d) CCC will not reimburse claims submitted later than 6 months after the end of an FMD Cooperator's program year.

(e) If CCC overpays a reimbursement claim, the FMD Cooperator shall repay CCC within 30 calendar days of such overpayment the amount of the overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The FMD Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall repay CCC within 30 calendar days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The

Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) FMD funds may be expended by FMD Cooperators only on legitimate, approved activities as set forth in the agreement and approval letter. If a Cooperator discovers that FMD funds have not been properly spent, it shall notify CCC and shall within 30 calendar days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The FMD Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The FMD Cooperator shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and its U.S. office shall report such actions in writing to the appropriate FAS Division Director.

§ 1484.55 Advances.

(a) *Policy.* In general, CCC operates the Cooperator program on a reimbursable basis.

(b) *Exception.* Upon request, CCC may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by CCC only to Cooperators with foreign offices supported with project funds. The second is a special advance payment used to pay an impending large cost item. CCC will provide this type of advance expense payment in lieu of direct payments by CCC to vendors or other third parties. All Cooperators, with or without project fund-supported foreign offices, are eligible to request special advance payments. CCC will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior program year. When approving a request for an advance, CCC may require the Cooperator to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the Cooperator program. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, the Cooperator's history of performance in the Cooperator program, the Cooperator's perceived financial stability and resources, and any other factors presented in the particular situation that may reflect on the Cooperator's responsibility or the riskiness of its activities.

(c) *Interest.* A Cooperator shall deposit and maintain in an insured account in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Cooperator on funds advanced by CCC is not program income. Up to $500 of interest earned per year may be retained by the Cooperator for administrative expenses. Any additional interest earned on Federal advance payments shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(d) *Refunds due CCC.* A Cooperator shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the Cooperator must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

Subpart E—Reporting, Evaluation, and Compliance

§ 1484.70 Reports.

(a) Cooperators are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for the required financial and performance reports will be specified in the agreement between CCC and the Cooperator.

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

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

(c) All final performance reports will be made available to the public.

(d) Not later than 45 calendar days after the completion of travel (other than local travel), a Cooperator shall submit a trip report. The report must be submitted to the appropriate Attaché/Counselor(s) and must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(e) Not later than 90 calendar days after the end of its program year, a Cooperator shall submit a report on any research conducted pursuant to the approved FMD program.

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

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

§ 1484.71 Disclosure of program information.

(a) Documents submitted to CCC by Cooperators are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A, and, specifically, 7 CFR 1.12.

(b) Upon request, a Cooperator shall provide to any person a copy of any document in its possession or control containing market information that is developed and produced under the terms of its agreement. The Cooperator may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

(c) Any research conducted by a Cooperator pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1484.72 Evaluation.

(a) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306, 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the Cooperator program. Evaluation of the Cooperator program's effectiveness will depend on a clear

statement by each Cooperator of the constraints and opportunities facing U.S. exports, goals to be met within a specified time, a schedule of measurable milestones for gauging success, a plan for achievement, and reports of activity results at regular intervals. The overall goal of Cooperators' programming is to achieve or maintain sales that would not have occurred in the absence of FMD funding. A Cooperator that can demonstrate such sales, taking into account extenuating factors beyond the Cooperator's control, will have met the overall objective of the GPRA and the need for evaluation.

(b) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a Cooperator's program, contribute to program accountability, and provide evidence of program effectiveness.

(c) Cooperators shall complete at least one program evaluation each year. A program evaluation is a review of the Cooperator's entire program, or an appropriate portion of the program as agreed to by the Cooperator and CCC, to determine the effectiveness of the Cooperator's strategy in meeting specified goals. The actual scope and timing of the program evaluation shall be determined by the Cooperator and CCC and specified in the Cooperator's approval letter. A Cooperator may contract with an independent evaluator to satisfy this requirement, although CCC reserves the right to have direct input and control over the design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator. In addition to the requirements set forth in 2 CFR part 200, a program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The activities covered by the evaluation;

(3) A concise statement of the constraint(s) and opportunities and the goals specified in the approved agreement;

(4) A description of the evaluation methodology;

(5) A description of additional export sales achieved, including the ratio of additional export sales in relation to Cooperator program funding received;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(d) A Cooperator shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation.

(e) On an annual basis, or more often when appropriate or required by CCC, a Cooperator shall complete and submit program success stories. CCC will announce to all Cooperators the detailed requirements for completing and submitting program success stories.

§ 1484.73 Failure to make required contribution.

A Cooperator's required contribution will be specified in the Cooperator's approval letter. If a Cooperator fails to contribute the amount specified in its approval letter, the Cooperator shall pay to CCC in U.S. dollars the difference between the amount it has contributed, and the amount specified in the approval letter. If the Cooperator's required contribution is specified as a percentage of the total amount reimbursed by CCC, the Cooperator may either return to CCC the necessary amount of funds reimbursed by CCC to increase its actual contribution percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A Cooperator shall remit such payment within six months after the end of its program year. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1484.74 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of a Cooperator's activities under this program to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Cooperators shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(b) Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

(c) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Cooperator. The compliance report will detail any instances where it appears that the Cooperator is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Cooperator and will explain the basis for any recovery of funds from the Cooperator. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the Cooperator program, CCC may require the Cooperator to contract for an independent audit.

(d) In addition, CCC may notify a Cooperator in writing at any time if CCC determines that CCC may be entitled to recover funds from the Cooperator. CCC will explain the basis for any recovery of funds from the Cooperator in the written notice. The Cooperator shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Cooperator notifies CCC within 30 calendar days of the date of the written notice that the Cooperator intends to file an appeal pursuant to the provisions of this part, the amount owed to CCC by the Cooperator is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(e) The fact that a compliance review has been conducted by USDA staff does not signify that a Cooperator is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

§ 1484.75 Cooperator response to compliance report.

(a) A Cooperator shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Cooperator does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Cooperator shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(b) After reviewing the response, CCC shall determine whether the Cooperator owes any funds to CCC and will inform the Cooperator in writing of the basis for the determination. CCC may initiate

action to collect such amount by providing the Cooperator a written demand for payment of the debt pursuant to debt settlement policies and procedures in 7 CFR part 1403.

§ 1484.76 Cooperator appeals of CCC determinations.

(a) Within 30 calendar days of the date of the issuance of a determination, the Cooperator may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Cooperator may also request a hearing.

(b) If the Cooperator requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Cooperator bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(c) CCC will base its final determination upon information contained in the administrative record. The Cooperator must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1484.77 Submissions.

For all permissible methods of delivery, submissions required by this part shall be deemed submitted as of the date received by CCC.

§ 1484.78 Amendments.

An agreement may be amended in writing with the consent of CCC and the Cooperator. All requests for program amendments must be submitted to CCC in writing and contain a justification for why the amendment is necessary. All amendment requests must be reviewed and approved by CCC before an amendment can be issued.

§ 1484.79 Subrecipients.

(a) A Cooperator may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Cooperator for this purpose. The Cooperator must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.331 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Cooperator must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Cooperator must include the following requirements in a subaward:

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

(2) The subrecipient must pay to the Cooperator the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

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

(c) A Cooperator must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

§ 1484.80 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Cooperators and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

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

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

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

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

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

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

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

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

§ 1484.81 Suspension and termination of agreements.

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

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

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

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

(1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

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

§ 1484.82 Noncompliance with an agreement.

(a) If a Cooperator fails to comply with any term in its agreement, approval letter, or this part, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the Cooperator, following the procedures set forth in this part. CCC may also initiate a claim against a Cooperator if program income or CCC-provided funds are lost due to an action or omission of the Cooperator. If any Cooperator has engaged in fraud with respect to the Cooperator program, or has otherwise violated program requirements under this part, CCC may:

(1) Hold such Cooperator liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such Cooperator plus interest as determined by FAS; and

(3) Collect liquidated damages from such Cooperator in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

Dated: December 6, 2019.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

In concurrence with:

Dated: December 6, 2019

Ken Isley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2019–27964 Filed 1–8–20; 8:45 am]

BILLING CODE 3410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2019–0195]

RIN 3150–AK38

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® System, Certificate of Compliance No. 1031, Amendment No. 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International, Inc. (NAC) MAGNASTOR® System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1031. Amendment No. 8 revises the technical specifications to delete Technical Specification A5.6 and revise the maximum pellet diameter in the technical specifications, Appendix B, Table B2–3, from 0.325 inches to 0.3255 inches for the CE16H1 hybrid fuel assembly, which includes Combustion Engineering 16 x 16 fuel assemblies. These revisions are discussed in more detail in the ''Discussion of Changes'' section of this document.

DATES: This direct final rule is effective March 24, 2020, unless significant adverse comments are received by February 10, 2020. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or Edward M. Lohr, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–0253; email: *Edward.Lohr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0195 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–2019–0195.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2019–0195 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This direct final rule is limited to the changes contained in Amendment No. 8 to Certificate of Compliance No. 1031 and does not include other aspects of the NAC MAGNASTOR® System (MAGNASTOR® System) design. The NRC is using the ''direct final rule'' procedure to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be noncontroversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on March 24, 2020. However, if the NRC receives significant adverse comments on this direct final rule by February 10, 2020, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008, that approved the NAC MAGNASTOR® System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1031 (73 FR 70587).

IV. Discussion of Changes

On September 12, 2018, as supplemented on November 2, 2018, June 14, 2019, and July 16, 2019, NAC submitted a request to amend Certificate of Compliance No. 1031 for the MAGNASTOR® System. Amendment No. 8 revises the technical specifications to delete Technical Specification A5.6, ''Special Requirements for the First System Placed in Service,'' and revises the maximum pellet diameter in the technical specifications, Appendix B, Table B2–3, from 0.325 inches to 0.3255 inches for the CE16H1 hybrid fuel assembly, which includes Combustion Engineering 16 x 16 fuel assemblies. The revised certificate of compliance and technical specifications are identified and evaluated in the preliminary safety evaluation report.

As documented in that preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. There are no significant changes to cask design requirements in the proposed amendment. The design of the cask would prevent loss of containment, shielding, and criticality control in the event of each evaluated accident condition. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 8 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' There will be no significant change in the types or amounts of any effluent

released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for, or consequences from, radiological accidents.

The amended MAGNASTOR® System design, when used under the conditions specified in the certificate of compliance, technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into those MAGNASTOR® System casks that meet the criteria of Amendment No. 8 to Certificate of Compliance No. 1031.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC MAGNASTOR® System design listed in § 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular Agreement State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the NAC MAGNASTOR® System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1031.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the NAC MAGNASTOR® System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 8 updates the certificate of compliance to delete Technical Specification A5.6 and revise the maximum pellet diameter in the technical specifications, Appendix B, Table B2–3, from 0.325 inches to 0.3255 inches for the CE16H1 hybrid fuel assembly, which includes Combustion Engineering 16 x 16 fuel assemblies.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 8 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC MAGNASTOR® System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

The design of the cask would prevent loss of confinement, shielding, and criticality control in the event of each evaluated accident condition. If there is no loss of confinement, shielding, or criticality control, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask.

Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 8 would remain well within 10 CFR part 20 limits. Therefore, the proposed certificate of compliance changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences of, radiological accidents. The NRC documented its safety findings in a preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 8 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC MAGNASTOR® System in accordance with the changes described in proposed Amendment No. 8 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden

upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 8 to Certificate of Compliance No. 1031 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled ''List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® System, Certificate of Compliance No. 1031, Amendment No. 8,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it (1) notifies the NRC in advance, (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR part 72 that approved the MAGNASTOR® System design by adding it to the list of NRC-approved cask designs in § 72.214.

On September 12, 2018, as supplemented on November 2, 2018, June 14, 2019, and July 16, 2019, NAC submitted a request to amend the MAGNASTOR® System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 8 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NAC MAGNASTOR® System under the changes described in Amendment No. 8 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden on the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1031 for the NAC MAGNASTOR® System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 8 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 8 to Certificate of Compliance No. 1031 for the NAC MAGNASTOR® System was initiated by NAC and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 8 applies only to new casks fabricated and used under Amendment No. 8. These changes do not affect existing users of the NAC MAGNASTOR® System, and previous amendments continue to be effective for existing users. While current certificate of compliance users may comply with the new requirements in Amendment No. 8, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No. 8 to Certificate of Compliance No. 1031 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC staff has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through the following methods.

Document	ADAMS accession No.
Submission of NAC International MAGNASTOR® System Thermal Performance Test Data Satisfying the Requirements of Certificate of Compliance, Appendix A, Section 5.6, September 12, 2018.	ML18257A079
NRC Letter, Receipt of Test Data for Thermal Performance Test for MAGNASTOR® System for Certificate of Compliance No. 1031—Acknowledgment Letter, October 25, 2018.	ML18299A008
Letter from NAC International Transmitting Amendment No. 8 Request and Supplement Information, November 2, 2018	ML18331A180
NRC Letter, Application for Amendment No. 8 Request for Additional Information, February 22, 2019	ML19056A057
Letter from NAC International Transmitting Supplement to Amendment No. 8 Request, June 14, 2019	ML19171A269
Letter from NAC International Transmitting Supplement to Amendment No. 8 Request, July 16, 2019	ML19199A151
Memorandum to J. Cai re: User Need for Rulemaking for Amendment No. 8, September 26, 2019	ML19228A239
Proposed Certificate of Compliance No. 1031 Amendment No. 8, Technical Specifications, Appendix A	ML19228A235
Proposed Certificate of Compliance No. 1031 Amendment No. 8, Technical Specifications, Appendix B	ML19228A236
Draft Certificate of Compliance 1031, Amendment No. 8	ML19228A237
Certificate of Compliance No. 1031 Amendment No. 8, Preliminary Safety Evaluation Report	ML19228A238

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2019–0195. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2019–0195); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Initial Certificate, Revision 1, Effective Date: February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 1, Revision 1, Effective Date: February 1, 2016.

Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 2, Revision 1, Effective Date: February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 3, Revision 1, Effective Date: February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

Amendment Number 7 Effective Date: August 21, 2017, as corrected (ADAMS Accession No. ML19045A346).

Amendment Number 8 Effective Date: March 24, 2020.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 13th day of December, 2019.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2019–28375 Filed 1–8–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket Number: 191211–0109]

RIN 0607–AA57

Temporary Suspension of the Population Estimates Challenge Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notification of final rulemaking.

SUMMARY: This document provides notice to state and local governments and to Federal agencies that, beginning on January 8, 2020, the Bureau of the Census (Census Bureau) will temporarily suspend the Population Estimates Challenge Program during the decennial census year (2020) and 2021 to accommodate the taking of the 2020 Census. The suspension of this program is a necessary action in order to ensure that sufficient resources are allocated to conduct the decennial census, allowing the Census Bureau's Population Division staff to effectively evaluate the 2020 Census results. The Census Bureau will publish a document in the **Federal Register** announcing the resumption of the Population Estimates Challenge Program when the stay is lifted.

DATES: Effective January 9, 2020, 15 CFR part 90 is stayed.

FOR FURTHER INFORMATION CONTACT: Amel Toukabri, Population Division, Bureau of the Census, Washington, DC 20233, telephone (301) 763–2461, email at <*amel.toukabri@census.gov*>.

SUPPLEMENTARY INFORMATION: The Census Bureau hereby notifies the public that it will suspend the Population Estimates Challenge Program after the resolution of all challenges to the 2018 population estimates, which should occur by January 8, 2020. The Census Bureau will release the 2019 population estimates in 2020; however, the Census Bureau will not accept challenges to the 2019 estimates.

Under title 15, part 90 CFR, ''Procedure for Challenging Population Estimates,'' the Census Bureau provides general-purpose governmental units the opportunity to seek a review and provide additional data to the Census Bureau's annual population estimates and to present evidence relating to the accuracy of the estimates. A general-purpose governmental unit may file a challenge to its population estimate any time up to 90 days after the release of the estimate by the Census Bureau on its website. The Census Bureau, upon receipt of the appropriate documentation to support the challenge, will attempt to resolve the discrepancy with the governmental unit in a timely manner. A general-purpose governmental unit may file a challenge of the revised estimate any time up to 90 days after its release.

Pursuant to the Population Estimates Challenge Program's governing regulations, the Census Bureau annually prepares, between decennial censuses, statistical estimates of the number of people residing in states and their governmental units. 15 CFR 90.1. The Census Bureau will not accept challenges to the 2019 population estimates, to be released in May 2020, because of conflicts with the Census Bureau's Population Division staff's work to support the review and evaluation of the 2020 Decennial Census. Additionally, the 2020 Decennial Census counts will start to be publicly available on a flow basis beginning in December 2020 and continue to be released in 2021, so the timing of these two separate releases might cause confusion for states, counties, and other units of general-purpose governments who regularly use the population and housing data for different purposes such as planning and providing a wide range of services to their communities.

State and local governments also play a critical role to ensure the accuracy of the Census Bureau's address file and resulting counts from the upcoming 2020 Census given the essential role of the population counts in determining congressional representation, redistricting, and the distribution of federal funds. Partnership efforts for the Census Bureau encompass building networks and engaging trusted voices to assist in meeting the overall 2020 Census goal of counting everyone once, only once, and in the right place.

For these reasons the Census Bureau will suspend the Population Estimates Challenge for the decennial year (2020) and 2021. The Population Estimates Challenge program was suspended during 2010 and 2011 to accommodate the taking of the 2010 Census.

During the suspension period, the Census Bureau will not provide the operations necessary to review challenges to the July 1, 2019, population estimates for states, counties, and other general-purpose governments, such as cities, towns, and villages. This is to ensure that sufficient resources are allocated to the conduct of the Decennial Census, allowing the Census Bureau's Population Division staff to effectively evaluate the 2020 Census results and prepare the groundwork for the new decade of estimates. During the period when the program is suspended, the Population Estimates Program will be conducting demographic analysis of the 2020 Census, evaluating the results of the 2020 Census in comparison with the population estimates, conducting research to enhance the estimates, and integrating the updates from the 2020 Census into the estimates program after the 2020 Census is concluded.

The Population Estimates Challenge Program will resume in 2022 after the Census Bureau concludes its responsibilities in the conduct of the decennial census. The Census Bureau will resume accepting challenges to the population estimates by publishing in the **Federal Register** a document that announces the date when it will begin to accept challenges. At that time, states, counties, and other units of general-purpose government may initiate challenges to population estimates under the procedures set forth in 15 CFR part 90. The Census Bureau would accept challenges beginning with the 2021 population estimates. The 2021 population estimates will be based upon the 2020 Census counts and are scheduled for release in 2022.

Classification

Executive Order 12866: It has been determined that this document is not significant for purposes of E.O. 12866.

Executive Order 13132: It has been determined that this document does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Administrative Procedure Act: The provisions of the Administrative Procedure Act requiring prior notice and opportunity for public comment are inapplicable under 5 U.S.C. 553(b)(B) because such prior notice and opportunity for public comment is unnecessary and impractical. The Population Estimates Challenge program is routinely suspended during decennial census operations in order to ensure that resources within the Population Division are allocated toward evaluating the decennial census results. This rule only suspends the program during the taking, processing and tabulation of the 2020 Census. Thus, this rule does not implement revisions to the program or its requirements. Furthermore, there is good cause to waive the thirty day delay in effective date pursuant to 5 U.S.C. (d)(3), as this rule does not require action nor burden any regulated entity, including state and local governments such as county, city, town, or village. Moreover, allowing an additional thirty days for challenges is not practical since the 2019 Population Estimates Challenge period would begin two months after the scheduled suspension of the Challenge program.

Regulatory Flexibility Act: Because a notice of proposed rulemaking and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure, Census data, State and local governments.

PART 90—PROCEDURE FOR CHALLENGING POPULATION ESTIMATES

■ For the reason stated in the preamble, and under the authority of 13 U.S.C. 4 and 181, 15 CFR part 90 is stayed indefinitely effective January 9, 2020.

Dated: December 20, 2019.

Steven D. Dillingham,

Director, Bureau of the Census.

[FR Doc. 2019–28416 Filed 1–8–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM20–3–000]

Annual Update of Filing Fees

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with the Commission's regulations, the Commission issues this update of its filing fees. This document provides the yearly update using data in the Commission's Financial System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2019.

DATES: February 10, 2020.

ADDRESSES:

FOR FURTHER INFORMATION CONTACT: Maryam Khan, Office of the Executive Director, Federal Energy Regulatory Commission, 999 North Capitol St. NE, Room 22–02, Washington, DC 20426, 202–502–6683.

SUPPLEMENTARY INFORMATION: *Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

From FERC's website on the internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's website during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The Federal Energy Regulatory Commission (Commission) is issuing this document to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2019 costs. The adjusted fees announced in this document are effective February 10, 2020. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	14,960
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	30,060
2. Review of a Department of Energy remedial order:	
Amount in controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	43,880
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	23,010
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	8,620
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	*1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	25,850
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	29,260

*This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Issued: December 26, 2019.

Anton C. Porter,

Executive Director.

In consideration of the foregoing, the Commission amends part 381, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42

U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In § 381.302, paragraph (a) is amended by removing ''$28,990'' and adding ''$30,060'' in its place.

§ 381.303 [Amended]

■ 3. In § 381.303, paragraph (a) is amended by removing ''$42,310'' and adding ''$43,880'' in its place.

§ 381.304 [Amended]

■ 4. In § 381.304, paragraph (a) is amended by removing ''$22,180'' and adding ''$23,010'' in its place.

§ 381.305 [Amended]

■ 5. In § 381.305, paragraph (a) is amended by removing ''$8,310'' and adding ''$8,620'' in its place.

§ 381.403 [Amended]

■ 6. In § 381.403 is amended by removing ''$14,430'' and adding ''$14,960'' in its place.

§ 381.505 [Amended]

■ 7. In § 381.505, paragraph (a) is amended by removing ''$24,920'' and adding ''$25,850'' in its place and by removing ''$28,210'' and adding ''$29,260'' in its place.

[FR Doc. 2019–28273 Filed 1–8–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0886]

Special Local Regulation; Hanohano Ocean Challenge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Hanohano Ocean Challenge special local regulations on the waters of Mission Bay, California on January 25, 2020. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 6 a.m. through 2 p.m. on January 25, 2020 for Item 16 in Table 1 of Section 100.1101.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant Briana Biagas, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the Hanohano Ocean Challenge in Mission Bay, CA in 33 CFR 100.1101, Table 1, Item 16 of that section from 6 a.m. until 2 p.m. on Saturday, January 25, 2020. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: December 27, 2019.

T.J. Barelli,

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

[FR Doc. 2019–28387 Filed 1–8–20; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Price Changes and Minor Classification Changes To Go Into Effect on January 26, 2020

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 notification 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.*

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2019–28252 Filed 1–8–20; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2018–0650; FRL–10001–94]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (18–3)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for certain chemical substances that are the subject of premanufacture notices (PMNs) and Orders issued by EPA under TSCA. This final rule requires persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on March 9, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on January 23, 2020.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA. Importers of chemicals subject to these SNURs must certify compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after February 10, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by the docket identification (ID) number listed at the top of this document, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for the chemical substances identified in Unit V. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that

is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of November 15, 2018 (83 FR 57634) (FRL–9985–22), EPA proposed SNURs for these chemical substances be added to 40 CFR part 721, subpart E. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents for the proposed SNUR. The record for these SNURs, established under docket ID number EPA–HQ–OPPT–2018–0650, includes information considered by the Agency in developing the proposed and final rules, public comments submitted for the proposed rule, and EPA's responses to public comments received.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). These requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

When the Agency issues an Order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments on the proposed rule from four identifying entities. The Agency's responses are described in a separate Response to Public Comments document contained in the docket for this rule, EPA–HQ–OPPT–2018–0650. EPA is finalizing the SNURs as proposed in this rule.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements in 40 CFR part 721, subpart E, for the chemical substances identified in this unit. In Unit IV. of the proposed rule published on November 15, 2018 (83 FR 57634) (FRL–9985–22), EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of each rule specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

These chemical substances are the subject of PMNs and Orders issued by EPA under TSCA section 5(e)(1)(A)(ii)(I), where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable

risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below the New Chemical Exposure Limit (NCEL). The comprehensive NCELs provisions in TSCA section 5(e) Orders include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA section 5(e) Orders with a SNUR that identifies the absence of those protective measures as Significant New Uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).
- To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for all the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which will be designated as significant new uses. The identities of 41 of the 67 chemical substances subject to this rule have been claimed as confidential. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated November 15, 2018 (the date of public release of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of November 15, 2018, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable (40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing, under 40 CFR part 721, subpart E. Unit IV. of the proposed rule (83 FR 57634; November 15, 2018) lists potentially useful information to EPA's evaluation. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN. EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can

meet both the data needs and the objective of TSCA section 4(h).

In some of the TSCA section 5(e) Orders for the chemical substances regulated under this rule, EPA has established production volume limits. These limits cannot be exceeded unless the PMN submitter submits the results of specified tests. The SNURs contain the same production volume limits as the TSCA section 5(e) Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the proposed rule may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2018–0650.

XII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection activities in this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the

annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including using automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note) does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 21, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add entries for §§ 721.11194 through 721.11220 in numerical order under the undesignated

center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11194	2070–0012
721.11195	2070–0012
721.11196	2070–0012
721.11197	2070–0012
721.11198	2070–0012
721.11199	2070–0012
721.11200	2070–0012
721.11201	2070–0012
721.11202	2070–0012
721.11203	2070–0012
721.11204	2070–0012
721.11205	2070–0012
721.11206	2070–0012
721.11207	2070–0012
721.11208	2070–0012
721.11209	2070–0012
721.11210	2070–0012
721.11211	2070–0012
721.11212	2070–0012
721.11213	2070–0012
721.11214	2070–0012
721.11215	2070–0012
721.11216	2070–0012
721.11217	2070–0012
721.11218	2070–0012
721.11219	2070–0012
721.11220	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.11194 through 721.11220 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

* * * * *

Sec.

* * * * *

721.11194 Alkene reaction and distillation by-products and residues (generic).
721.11195 Oxirane, 2-methyl-, polymer with oxirane, monobutyl ether, monoether with propylene oxide-2-[[3-(triethoxysilyl)propoxy]methyl]oxirane polymer.
721.11196 Aliphatic acrylate (generic).
721.11197 Flue dust, glass-manufg. desulfurization. Definition: The dust produced from the flue gas exhaust cleaning of a glass manufacturing process using carbonate containing substances. It consists primarily of Na2S04, Na2CO3, and Na4(SO4)(CO3).
721.11198 Organo-titanate (generic).
721.11199 Dialkyl 7,10-dioxa, dithiahexadeca diene (generic).
721.11200 Haloalkyl substituted carbomonocycle (generic).
721.11201 Amine- and hydroxy-functional acrylic polymer, neutralized (generic).
721.11202 Amine- and hydroxy-functional acrylic polymer (generic).
721.11203 Hydroxy acrylic polymer, methanesulfonates (generic).
721.11204 Alkyl perfluorinated acryloyl ester (generic).
721.11205 Poly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-2-propen-1-yl)-.omega.-hydroxy-.
721.11206 Alkylidene dicarbomonocycle, polymer with halo-substituted heteromonocycle and disubstituted alkyl carbomonocycle alkenedioate alkylalkenoate (generic).
721.11207 Aluminum boron cobalt lithium nickel oxide.
721.11208 Aluminum boron cobalt lithium magnesium nickel oxide.
721.11209 Heteropolycyclic-alkanol carbomonocycle-alkanesulfonate (generic).
721.11210 (Substituted-dialkyl(C=1~7)silyl)alkanenitrile (generic).
721.11211 Substituted heteromonocycle, polymer with diisocyanato alkane and alkanediol, substituted heteromonocycle homopolymer ester with substituted alkylacrylate; blocked (generic).
721.11212 Glycolipids, sophorose-contg., candida bombicola-fermented, from C16-18 and C18-unsatd. glycerides and D-glucose, hydrolyzed, sodium salts.
721.11213 Glycolipids, sophorose-contg., candida bombicola-fermented, from C16-18 and C18-unsatd. glycerides and D-glucose, hydrolyzed, potassium salts.
721.11214 2-Propenoic acid, 2-methyl-, 2-(2-butoxyethoxy)ethyl ester, polymer with 1,3-butadiene and 2-propenenitrile.
721.11215 Halogenated benzoic acid ethyl ester (generic).
721.11216 Halogenated benzoic acid (generic).
721.11217 Certain halogenated sodium benzoate salts.
721.11218 Benzoic acid, 2, 3, 6-trifluoro, sodium salt (1:1).
721.11219 Fatty acids, diesters with dihydroxyalkane, fatty acids, esters with dihydroxyalkane (generic) (P–18–3, chemical A and B).
721.11220 Substituted carbomonocycle, polymer with halo substituted heteromonocycle and polyoxyalkylene polymer with alkylenebis[isocyanatocarbomonocycle] bis (carbomonocycledicarboxylate), reaction products with alkylamines, hydrolyzed (generic).

* * * * *

§ 721.11194 Alkene reaction and distillation by-products and residues (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkene reaction and distillation by-products and residues (PMN P–15–106) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), (4), and (5), (a)(6)(v) and (vi), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (3), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 2 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), and (ix), (g)(2)(i), (ii), (iv), and (v) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 2 mg/m^3), (g)(3)(ii), (g)(4) (do not release to water at concentrations that exceed 1 ppb), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11195 Oxirane, 2-methyl-, polymer with oxirane, monobutyl ether, monoether with propylene oxide-2-[[3-(triethoxysilyl) propoxy]methyl]oxirane polymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, 2-methyl-, polymer with oxirane, monobutyl ether, monoether with propylene oxide-2-[[3-(triethoxysilyl)propoxy]methyl]oxirane polymer (PMN P–15–726, CAS No. 1644400–33–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that generates a vapor, dust, mist, or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11196 Aliphatic acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aliphatic acrylate (PMN P–16–337) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3), (4), and (5), (a)(6)(v) and (vi) (particulate), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health with assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 0.1%), (f), (g)(1)(i), (ii), (iv), (vii), and (ix), (g)(2)(i) through (v), (g)(3)(i) and (ii), (g)(4) (release restrictions apply), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11197 Flue dust, glass-manufg. desulfurization. Definition: The dust produced from the flue gas exhaust cleaning of a glass manufacturing process using carbonate containing substances. It consists primarily of Na2S04, Na2CO3, and Na4(SO4)(CO3).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as flue dust, glass-manufg. desulfurization. Definition: The dust produced from the flue gas exhaust cleaning of a glass manufacturing process using carbonate containing substances. It consists primarily of Na2S04, Na2CO3, and Na4(SO4)(CO3) (PMN P–16–421, CAS No. 1916486–36–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a glass product.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), (4), and (5), (a)(6)(v) and (vi) (particulate), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50 or when the PMN substance is in a mixture at a concentration below 1.0 percent by weight, an APF of 10.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(iii), (iv), (vi), and (ix) (cardiovascular effects), (a)(2)(i) through (v), and (a)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h). It is a significant new use to modify the processes or uses described in the premanufacture notice such that occupational exposure is increased. It is a significant new use to manufacture the substance with an elemental composition different from that described in the PMN.

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11198 Organo-titanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as organo-titanate (PMN P–16–600) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (a)(6) (particulate), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(vii), (g)(2)(i) and (v), (g)(3)(ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to process or use the substance involving an application method that generates a vapor, mist, or aerosol.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11199 Dialkyl 7,10-dioxa, dithiahexadeca diene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkyl 7,10-dioxa, dithiahexadeca diene (PMN P–17–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3), (a)(6)(v) and (vi) (particulate), (b)(concentration set at 0.1%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(iv), (vi), (vii), and (ix) ((skin sensitization), (respiratory sensitization)), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), (g)(4)(i), and (g)(5). Alternative hazard warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g). It is a significant new use to manufacture, process, or use the substance involving an application method that generates a vapor, mist, dust, or aerosol.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=67.

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11200 Haloalkyl substituted carbomonocycle (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as haloalkyl substituted carbomonocycle (PMN P–17–49) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified § 721.63(a)(1), (a)(2)(i) through (iv), (a)(3), (4), (5), and (6) (particulate), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health with assigned protection factor of at least 10.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(ix) ((irritation) (sensitization) (liver toxicity) (mutagenicity)), (g)(2)(i) through (v), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to use the substance without the confidential engineering controls specified in the TSCA section 5(e) Order.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11201 Amine- and hydroxy-functional acrylic polymer, neutralized (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amine- and hydroxy-functional acrylic polymer, neutralized (PMN P–17–249) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely entrained in dried coating.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), (g)(3)(ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.63(g)(4)(i), do not release to water without pre-treatment of water releases at an onsite waste water treatment plant with at least 96% efficiency.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to use the substance without the confidential engineering controls specified in the TSCA section 5(e) Order. It is a significant new use to manufacture or use the substance with methods that generate a dust, spray, mist, or aerosol.

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(iv) *Release to water.* It is a significant new use to release to water without pretreatment at an on-site wastewater treatment plant with at least 96% efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11202 Amine- and hydroxy-functional acrylic polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amine- and hydroxy-functional acrylic polymer (PMN P–17–380) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely entrained in dried coating.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), (g)(3)(ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.63(g)(4)(i), do not release to water without pre-treatment of water releases at an onsite waste water treatment plant with at least 96% efficiency.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to use the substance without the confidential engineering controls specified in the TSCA section 5(e) Order. It is a significant new use to manufacture or use the substance with methods that generate a dust, spray, mist, or aerosol.

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(iv) *Release to water.* It is a significant new use to release to water without pretreatment at an on-site wastewater treatment plant with at least 96% efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11203 Hydroxy acrylic polymer, methanesulfonates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydroxy acrylic polymer, methanesulfonates (PMN P–17–381) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely entrained in dried coating.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), (g)(3)(ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.63(g)(4)(i), do not release to water without pre-treatment of water releases at an onsite waste water treatment plant with at least 96% efficiency.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to use the substance without the confidential engineering controls specified in the TSCA section 5(e) Order. It is a significant new use to manufacture or use the substance with methods that generate a dust, spray, mist, or aerosol.

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(iv) *Release to water.* It is a significant new use to release to water without pretreatment at an on-site wastewater treatment plant with at least 96% efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11204 Alkyl perfluorinated acryloyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl perfluorinated acryloyl ester (PMN P–17–270) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after

they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11205 Poly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-2-propen-1-yl)-.omega.-hydroxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-2-propen-1-yl)-.omega.-hydroxy- (PMN P–17–271, CAS No. 31497–33–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as a polymer intermediate. It is a significant new use to manufacture, process or use the substance in a manner that generates a vapor, mist, or aerosol, or that results in inhalation exposure.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11206 Alkylidene dicarbomonocycle, polymer with halo-substituted heteromonocycle and disubstituted alkyl carbomonocycle alkenedioate alkylalkenoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylidene dicarbomonocycle, polymer with halo-substituted heteromonocycle and disubstituted alkyl carbomonocycle alkenedioate alkylalkenoate (PMN P–17–304) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after it has been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(6)(v) and (vi) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii) (skin sensitization), (g)(2)(i), (ii), and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as an intermediate for thermoset plastic material. It is a significant new use to manufacture (includes importing) the substance to contain more than 0.1% residual isocyanate by weight.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11207 Aluminum boron cobalt lithium nickel oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as aluminum boron cobalt lithium nickel oxide (PMN P–17–337, CAS No. 207803–51–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (ii), (a)(3)(i) and (ii), (a)(4) and (5), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1,000.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL 0.000092 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (concentration set at 0.1%), (f), (g)(1)(i) and (vii) (damage to the lung, kidney, and spleen), (g)(2)(i), (iii), and (iv), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.63(g), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.000092 mg/m^3, and avoid breathing substance in the dust form.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance beyond two years. It is a significant new use to manufacture or process the substance at any facility unless all process air streams containing the substances pass through control technology such as a high-efficiency particulate air filter with a rated removal efficiency of at least 99.99%.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2). It is a significant new use to dispose of the substance by metal reclamation unless the person reclaiming metal containing the substance complies with this section. It is a significant new use to release the substance to air unless the chemical transfer and air ventilation processes specified in the TSCA section 5(e) Order are followed.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iv) of this section.

§ 721.11208 Aluminum boron cobalt lithium magnesium nickel oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as aluminum boron cobalt lithium magnesium nickel oxide (PMN P–17–338, CAS No. 2087499–33–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (ii), (a)(3)(i) and (ii), (a)(4) and (5), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1,000.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL 0.000092 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (concentration set at 0.1%), (f), (g)(1)(i) and (vii) (damage to the lung, kidney, and spleen), (g)(2)(i), (iii), and (iv), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.63(g), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.000092 mg/m^3, and avoid breathing substance in the dust form.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance beyond two years. It is a significant new use to manufacture or process the substance at any facility unless all process air streams containing the substances pass through control technology such as a high-efficiency particulate air filter with a rated removal efficiency of at least 99.99%.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2). It is a significant new use to dispose of the substance by metal reclamation unless the person reclaiming metal containing the substance complies with this section. It is a significant new use to release the substance to air unless the chemical transfer and air ventilation processes specified in the TSCA section 5(e) Order are followed.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iv) of this section.

§ 721.11209 Heteropolycyclic-alkanol carbomonocycle-alkanesulfonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteropolycyclic-alkanol carbomonocycle-alkanesulfonate (PMN P–17–343) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), (a)(6) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (vi), and (ix) ((eye irritation), (systemic effects)), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture, process or use the substance in a manner that results in inhalation exposure to a vapor, mist, dust or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11210 (Substituted-dialkyl(C=1~7)silyl)alkanenitrile (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as (substituted-dialkyl(C=1~7)silyl)alkanenitrile (PMN P–17–354) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), (4), and (5), (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health with assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (iv), (vi), and (ix) ((skin and eye irritation), (sensitization), (mutagenicity)), (g)(2)(i) through (v) (use eye protection), (g)(3)(i) and (ii), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1) (waste streams from use must be disposed of only by incineration with no less than 99.9% efficiency).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11211 Substituted heteromonocycle, polymer with diisocyanato alkane and alkanediol, substituted heteromonocycle homopolymer ester with substituted alkylacrylate; blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted heteromonocycle, polymer with diisocyanato alkane and alkanediol, substituted heteromonocycle homopolymer ester with substituted alkylacrylate- blocked (PMN P–17–361) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (4), and (5), (a)(6)(v) and (vi) (particulate), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health with assigned protection factor (APF) of at least 50 or an APF of at least 1,000 if spray applied.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i), (vii), and (ix) ((sensitization), (systemic effects)), (g)(2)(i) through (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture the substance containing greater than 0.25% residual isocyanate or an average molecular weight less than 2,280 daltons. It is a significant new use to use the substance other than as a dual-cure adhesion coating or barrier.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11212 Glycolipids, sophorose-contg., candida bombicola-fermented, from C16–18 and C18-unsatd. glycerides and D-glucose, hydrolyzed, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycolipids, sophorose-contg., candida bombicola-fermented, from C16–18 and C18-unsatd. glycerides and D-glucose, hydrolyzed, sodium salts (PMN P–17–401, CAS No. 2102535–74–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3) and (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i) and (ii) (eye irritation), (g)(2)(i) through (iii) and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture, process, or use the substance in any manner that results in generation of a vapor, dust, mist or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11213 Glycolipids, sophorose-contg., candida bombicola-fermented, from C16–18 and C18-unsatd. glycerides and D-glucose, hydrolyzed, potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycolipids, sophorose-contg., Candida bombicola-fermented, from C16–18 and C18-unsatd. glycerides and D-glucose, hydrolyzed, sodium salts (PMN P–17–402, CAS No. 2102536–64–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i) and (ii) (eye irritation), (g)(2)(i) through (iii) and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture, process, or use the substance in any manner that results in generation of a vapor, dust, mist or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11214 2-Propenoic acid, 2-methyl-, 2-(2-butoxyethoxy)ethyl ester, polymer with 1,3-butadiene and 2-propenenitrile.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, 2-(2-butoxyethoxy)ethyl ester, polymer with 1,3-butadiene and 2-propenenitrile (PMN P–17–404, CAS No. 2058302–39–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in the generation of spray, mist, aerosol, or respirable particles.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11215 Halogenated benzoic acid ethyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically in table 1 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1 OF § 721.11215—HALOGENATED BENZOIC ACID ETHYL ESTERS

PMN No.	Chemical name (generic)
P–17–405 ...	Halogenated benzoic acid ethyl ester.
P–17–406 ...	Halogenated benzoic acid ethyl ester.
P–17–407 ...	Halogenated benzoic acid ethyl ester.
P–17–408 ...	Halogenated benzoic acid ethyl ester.
P–17–409 ...	Halogenated benzoic acid ethyl ester.
P–17–410 ...	Halogenated benzoic acid ethyl ester.
P–17–411 ...	Halogenated benzoic acid ethyl ester.

TABLE 1 OF § 721.11215—HALOGENATED BENZOIC ACID ETHYL ESTERS—Continued

PMN No.	Chemical name (generic)
P–17–412 ...	Halogenated benzoic acid ethyl ester.
P–17–423 ...	Halogenated benzoic acid ethyl ester.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iv), (a)(3), (a)(4) and (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and (t). It is a significant new use to use the substances other than for oil and gas well performance. It is a significant new use to manufacture or process the substances without the engineering controls specified in the TSCA section 5(e) Order. It is a significant new use to exceed the kilograms per day limit specified in the TSCA section 5(e) Order of the substances handled at processing and use sites.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=8.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11216 Halogenated benzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically in the table 1 of this section are subject to reporting under this section for the significant new uses

described in paragraph (a)(2) of this section.

TABLE 1 OF § 721.11216—HALOGENATED BENZOIC ACIDS

PMN No.	Chemical name (generic)
P–17–414 ...	Halogenated benzoic acid.
P–17–415 ...	Halogenated benzoic acid.
P–17–416 ...	Halogenated benzoic acid.
P–17–417 ...	Halogenated benzoic acid.
P–17–418 ...	Halogenated benzoic acid.
P–17–420 ...	Halogenated benzoic acid.
P–17–421 ...	Halogenated benzoic acid.
P–17–422 ...	Halogenated benzoic acid.
P–17–441 ...	Halogenated sodium benzoate.
P–17–442 ...	Halogenated sodium benzoate.
P–17–444 ...	Halogenated sodium benzoate.
P–17–445 ...	Halogenated sodium benzoate.
P–17–446 ...	Halogenated sodium benzoate.
P–17–447 ...	Halogenated sodium benzoate.
P–17–448 ...	Halogenated sodium benzoate.
P–17–449 ...	Halogenated sodium benzoate.
P–17–450 ...	Halogenated benzoic acid.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iv), (a)(3), (4), and (5), (a)(6)(v) and (vi) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health with assigned protection factor of at least 50, and respirators are only required for P–17–414 to P–17–418, P–17–420 to P–17–422, and P–17–450.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for the substances. The NCEL is 0.0184 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i) through (iv), (vi), and (ix), (g)(2)(i) through (iii), (v), and (iv), (g)(3)(i) and (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.63(g)(2), use respiratory protection or maintain workplace airborne concentration at or below an 8-hour time-weighted average of 0.0184 mg/m^3, and the statement is only required for P–17–414 to P–17–418, P–17–420 to P–17–422, and P–17–450.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and (t). It is a significant new use to use the substances other than for monitoring well performance. It is a significant new use to manufacture or process the substances without the engineering controls specified in the TSCA section 5(e) Order. It is a significant new use to exceed the kilograms per day limit specified in the TSCA section 5(e) Order of the substances handled at processing and use sites. It is a significant new use to use P–17–441 to 442 and P–17–444 to P–17–449 other than in a liquid formulation.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=460.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11217 Certain halogenated sodium benzoate salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances listed in table 1 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1 OF § 721.11217—HALOGENATED SODIUM BENZOATE SALTS

PMN No.	CAS No.	Chemical name
P–17–424.	1708942–16–8	Benzoic acid, 2-chloro-3-methyl-, sodium salt (1:1).
P–17–425.	1708942–17–9	Benzoic acid, 3-chloro-2-methyl-, sodium salt (1:1).
P–17–426.	1708942–15–7	Benzoic acid, 3-chloro-4-methyl-, sodium salt (1:1).
P–17–427.	118537–88–5	Benzoic acid, 2-chloro-5-methyl-, sodium salt (1:1).
P–17–428.	203261–42–1	Benzoic acid, 4-chloro-2-methyl-, sodium salt (1:1).
P–17–429.	1708942–24–8	Benzoic acid, 3-fluoro-2-methyl-, sodium salt (1:1).
P–17–430.	1805805–74–6	Benzoic acid, 3-fluoro-4-methyl-, sodium salt (1:1).
P–17–431.	1708942–23–7	Benzoic acid, 4-fluoro-2-methyl-, sodium salt (1:1).
P–17–432.	1708942–19–1	Benzoic acid, 2-fluoro-4-methyl-, sodium salt (1:1).
P–17–433.	1708942–18–0	Benzoic acid, 2-fluoro-3-methyl-, sodium salt (1:1).
P–17–435.	1701446–41–4	Benzoic acid, 2-fluoro-3-(trifluoromethyl)-, sodium salt (1:1).
P–17–436.	1708942–20–4	Benzoic acid, 2-fluoro-4-(trifluoromethyl)-, sodium salt (1:1).
P–17–437.	1708942–21–5	Benzoic acid, 2-fluoro-6-(trifluoromethyl)-, sodium salt (1:1).

TABLE 1 OF § 721.11217—HALOGENATED SODIUM BENZOATE SALTS—Continued

PMN No.	CAS No.	Chemical name
P–17–438.	1535169–59–5	Benzoic acid, 3-fluoro-5-(trifluoromethyl)-, sodium salt (1:1).
P–17–439.	1701446–39–0	Benzoic acid, 4-fluoro-3-(trifluoromethyl)-, sodium salt (1:1).
P–17–440.	1708942–22–6	Benzoic acid, 4-fluoro-2-(trifluoromethyl)-, sodium salt (1:1).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iv), (a)(3) and (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (iii), (iv), (vi), and (ix), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to handle at a processing or use site more than 50 kilograms per day per site in aggregate of the PMN substances for solid formulations that generate a dust. It is a significant new use to use the substances other than as tracers in aqueous solution, in solid blends with polymers, or in a solid proppant bead forms to measure flow in deep oil-bearing or gas-bearing strata.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=300.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11218 Benzoic acid, 2, 3, 6-trifluoro, sodium salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzoic acid, 2, 3, 6-trifluoro, sodium salt (1:1) (PMNs P–17–434 and P–17–443, CAS No. 1803845–07–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iv), (a)(3) and (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (iii), (iv), (vi), and (ix), (g)(2)(i) through (iii) and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). It is a significant new use to manufacture the substance other than in a liquid formulation and without the confidential engineering controls specified in the TSCA section 5(e) Order for P–17–443. It is a significant new use new use to use the substance other than as a tracer in aqueous solution, a solid blend with polymer, or a solid proppant bead form to measure flow in deep oil-bearing or gas-bearing strata or for the confidential use specified in the Order for P–17–443.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b)

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11219 Fatty acids, diesters with dihydroxyalkane, fatty acids, esters with dihydroxyalkane (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acids, diesters with dihydroxyalkane, fatty acids, esters with dihydroxyalkane (PMN P–18–3, chemical A and P–18–3, chemical B) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) and (a)(6)(v) and (vi) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1) (skin and eye irritation and sensitization), (g)(2)(i) through (iii), and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11220 Substituted carbomonocycle, polymer with halo substituted heteromonocycle and polyoxyalkylene polymer with alkylenebis[isocyanatocarbomonocycle] bis (carbomonocycledicarboxylate), reaction products with alkylamines, hydrolyzed (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted carbomonocycle, polymer with halo substituted heteromonocycle and polyoxyalkylene polymer with alkylenebis[isocyanatocarbomonocycle] bis (carbomonocycledicarboxylate), reaction products with alkylamines, hydrolyzed (PMN P–18–22) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3), (4), (5), and (6) (particulate), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health with assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(ii) (irritation to skin, eyes, lungs, and mucous membranes), (g)(2)(i) through (v) (avoid eye contact), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as primer coating used for corrosion protection. It is a significant new use to import the substance with an average molecular weight greater less than 1026 daltons, and with low weight fractions greater than 15.3% less than 500 daltons and 25% less than 1000 daltons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2019–26227 Filed 1–8–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R04–OAR–2018–0183; FRL–9996–80–Region 4]

Alabama; Approval of Plan for Control of Emissions From Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state plan submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on May 19, 2017, and supplemented on October 24, 2017, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units. The State plan provides for implementation and enforcement of the EG, as finalized by EPA on June 23, 2016, applicable to existing CISWI units for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced after June 4, 2010, but no later than August 7, 2013. The State plan establishes emission limits, monitoring, operating, recordkeeping, and reporting requirements for affected CISWI units.

DATES: This rule will be effective February 10, 2020. The incorporation by reference of documents listed in this rule is approved by the Director of the Federal Register as of February 10, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0183. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy form at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Bloeth, Communities and Air Toxics Section, Air Analysis and Support Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. Mr. Bloeth can be reached via telephone at 404–562–9013 and via email at *bloeth.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the Clean Air Act (CAA or the Act) directs the Administrator to develop regulations under that section and section 111(d) of the Act limiting emissions of nine air pollutants (particulate matter, carbon monoxide, dioxins/furans, sulfur dioxide, nitrogen oxides, hydrogen chloride, lead, mercury, and cadmium) from four categories of solid waste incineration units: Municipal solid waste incinerators; hospital, medical, and infectious solid waste incinerators; commercial and industrial solid waste incinerators; and other solid waste incinerators.

On December 1, 2000, EPA promulgated new source performance standards (NSPS) and EG to reduce air pollution from CISWI units, which are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. *See* 65 FR 75338. EPA revised the NSPS and EG for CISWI units on March 21, 2011. *See* 76 FR 15704. Following promulgation of the 2011 CISWI rule, EPA received petitions requesting that EPA reconsider numerous provisions in the rule. EPA granted reconsideration on certain issues, and, subsequently, on February 7, 2013, EPA promulgated a CISWI reconsideration rule. *See* 78 FR 9112. Following the 2013 CISWI reconsideration rule, EPA received petitions to reconsider certain provisions of the NSPS and EG for

CISWI units. On January 21, 2015, EPA granted reconsideration on four specific issues and, subsequently, on June 23, 2016, EPA finalized reconsideration of the CISWI NSPS and EG. *See* 81 FR 40956.

Section 129(b)(2) of the CAA requires states to submit to EPA for approval state plans and revisions that implement and enforce the EG—in this case, 40 CFR part 60, subpart DDDD. State plans and revisions must be at least as protective as the EG, and become federally enforceable upon approval by EPA. The procedures for submittal and adoption of state plans and revisions are codified in 40 CFR part 60, subpart B. On March 14, 2014, Alabama submitted a state plan to implement and enforce the EG for existing CISWI units in the State.[1] On May 19, 2017, Alabama submitted a revised plan, which was supplemented on October 24, 2017.[2]

In a notice of proposed rulemaking published on June 5, 2018 (83 FR 25983), EPA proposed to approve Alabama's State plan. Additional information concerning Alabama's State plan submission and the rationale for EPA's actions for this final rule are explained in the June 5, 2018 proposed rulemaking. Comments on the proposed rulemaking were due on or before July 5, 2018. EPA received no comments.

II. Final Action

EPA is taking final action to approve Alabama's State plan to implement and enforce the EG for existing CISWI units in the State, as submitted on May 19, 2017, and supplemented on October 24, 2017. EPA is taking this action because it has concluded that Alabama's State plan is consistent with sections 111(d) and 129 of the CAA. As part of this action, EPA is incorporating by reference Alabama Rule 335–3–3-.05, effective, as a matter of State law, December 8, 2017. Alabama Rule 335–3–3-.05 includes emission limits, operating limits, monitoring requirements, recordkeeping requirements, reporting requirements, and operator training and qualification requirements applicable to affected CISWI units. EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of the preamble for more information).

[1] EPA did not act on the plan submitted by Alabama, at that time.

[2] The submitted State plan does not apply in Indian country located in the State.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided they meet the criteria and objectives of the CAA and EPA's implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and, although the plan is federally enforceable, this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). And it does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because EPA is not approving the submitted rule to apply in Indian country located in the state and because the submitted rule will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Incorporation by Reference, Intergovernmental relations, Manufacturing, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Authority: 42 U.S.C. 7411.

Dated: December 10, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart B—[Amended]

■ 2. In subpart B, remove the undesignated center heading ''Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units (Section 111(d)/129 Plan)''.

■ 3. Revise § 62.107 to read as follows:

§ 62.107 Identification of sources.

(a) *Approval of State Plan for Commercial and Industrial Solid Waste Incineration Units.* Effective February 10, 2020, EPA approved Alabama's State Plan for Commercial and Solid Waste Incineration Units, which is codified at Alabama Rule 335–3–3-.05, amended December 8, 2017, and which is incorporated by reference. The plan applies to each existing commercial and industrial solid waste incineration unit and air curtain incineration unit in the State of Alabama that commenced construction on or before June 4, 2010, or commenced modification or construction after June 4, 2010, but no later than August 7, 2013, as such incineration units are defined in 40 CFR 60.2875 and 40 CFR part 60.

(b) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA

Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004 or U.S. EPA, Region 4, Air Analysis and Support Branch, 61 Forsyth Street, Atlanta, GA 30303. The telephone number for the Public Reading Room is (202) 566–1744. Copies may be inspected 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: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) State of Alabama, Alabama Department of Environmental Management. 1400 Coliseum Boulevard, Montgomery, AL 36110, 334–271–7700, *adem.alabama.gov.*

(i) Administrative Rule 335–3–3–3.05, Incineration of Commercial and Industrial Solid Waste (Administrative Code division 335–3, Air Division—Air Pollution Control Program), adopted October 20, 2017.

(ii) [Reserved]

[FR Doc. 2019–27671 Filed 1–8–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2019–0393; FRL–10000–52–Region 9]

Partial Approval, Partial Disapproval and Promulgation of State Plans for Designated Facilities and Pollutants; California; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a Clean Air Act (CAA) section 111(d) plan submitted by the California Air Resources Board (CARB) to implement the EPA's Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Emission Guidelines). This State plan submittal pertains to the regulation of landfill gas and its components from existing municipal solid waste (MSW) landfills. We are partially approving the State plan because it meets many of the requirements of the Emission Guidelines. However, we are partially disapproving the State plan because it does not fully meet certain provisions of the Emission Guidelines.

DATES: This final rule is effective on February 10, 2020. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of *February 10, 2020.*

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0393. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4152 or by email at *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. Proposed Action

On July 30, 2019, the EPA proposed to partially approve and partially disapprove a section 111(d) plan submitted by CARB for existing MSW landfills. 84 FR 36863. The submitted section 111(d) plan was in response to the August 29, 2016 promulgation of revised emission guidelines requirements for MSW landfills, 40 CFR part 60, subpart Cf.[1] Included within the section 111(d) plan are regulations under the California Code of Regulations (CCR), at 17 CCR 95460–95476, entitled, ''Methane Emissions from Municipal Solid Waste Landfills.'' A detailed explanation of the rationale behind the proposed approval is available in the Technical Support Document in the docket for this rulemaking.

We proposed to partially approve this plan because we determined that it complies with the relevant CAA requirements, with the exception of the omission of the following operational, monitoring, recordkeeping, and corrective action requirements related either to temperature and/or oxygen or nitrogen: 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5). Upon promulgation of the Federal plan in accordance with 40 CFR 60.27(c), the EPA plans to update 40 CFR part 62, subpart F, to identify the omitted requirements (40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5)) that MSW landfills in California will have to implement in addition to the approved portion of the California plan.[2] Our proposed action at 84 FR 36863 (July 30, 2019) contains more information on the plan and our evaluation, and we incorporate that information by reference here.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period we received one comment, from CARB.

Comment: CARB stated that California law currently satisfies what the EPA identified as deficiencies in its July 30, 2019 proposed partial disapproval of the California plan. In support of its argument, CARB submitted rules with its comment regarding the regulation of MSW landfills from 32 of California's 35 local air districts, and documentation regarding public hearings related to their adoption. CARB also submitted a table summarizing the rules and a previously submitted letter addressing questions the EPA had asked about the California plan.[3] CARB requests that the EPA withdraw its proposed partial disapproval of the California plan and approve it in its entirety, or, in the alternative, that the EPA incorporate the provisions of the rules and regulations into the State's plan and then fully approve the plan.

Response: Pursuant to 40 CFR 60.24(c), a state plan must contain standards of performance that are no less stringent than the corresponding emission guideline(s) specified in subpart C of part 60. Subpart Cf sets

[1] 81 FR 59276.

[2] The EPA is required to promulgate regulations setting forth a federal plan on or before November 6, 2019. *State of California* v. *EPA,* No. 4:18–cv–03237 (N.D. Cal. 2019) (Court Order issued May 6, 2019). Pending before the court is a motion to vacate the deadline for promulgation of a federal plan, based on EPA's recent finalization of revisions to emission guidelines implementing regulations. *Id.,* Motion to Amend Order and Judgment (filed August 26, 2019) (citing 84 FR at 44556 (codified at 40 CFR 60.30f(b)).

[3] Appendix C to CARB's comment letter is entitled, ''Air District Rules, Regulations, and Permit Conditions.'' The EPA found district rules and regulations in Appendix C, but was unable to find permit conditions in the document.

forth clear mandatory requirements for an approvable state plan. Sections 60.34f, 60.36f, 60.37f, 60.38f, and 60.39f each include the specific phrase: ''For approval, a state plan must include,'' which is then followed by a reference to specific requirements such as ''provisions for the operational standards in this section,'' ''the compliance provisions in this section,'' ''the monitoring provisions in this section,'' ''the reporting provisions listed in this section,'' or ''the recordkeeping provisions in this section.'' As explained in our proposed action, the California plan, as submitted, omits these provisions.

We note that CARB's comment does not dispute that the California state plan lacks the operational, monitoring, recordkeeping, and corrective action requirements previously identified by EPA, namely, those set forth in 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5). Nor does CARB dispute that the California State plan, which incorporates the California regulation, ''Methane Emissions from Municipal Solid Waste Landfills,'' does not itself contain these operational, monitoring, recordkeeping, and corrective action requirements.

Instead, CARB argues that other provisions that ''are already part of California law,'' and that appear in the rules and regulations of 32 of California's 35 air districts, can stand in lieu of what EPA identified as the operational, monitoring, recordkeeping, and corrective action requirements that are omitted from the California State plan. Although CARB provided these rules and regulations in an appendix to its comments, the rules and regulations are not part of CARB's submitted plan, and the EPA does not have authority to incorporate all or part of them into the plan on behalf of CARB. The EPA cannot approve a state plan that omits certain required elements on the basis that some other local regulation or permit that is not part of the submitted plan contains provisions that may resemble those elements. In accordance with CAA section 111(d)(1)(B),[4] EPA's implementing regulations,[5] and the Emission Guidelines,[6] the required elements must be in the plan itself.

Additionally, even if CARB had properly incorporated the rules and regulations into its plan, the EPA notes that the rules and regulations for the most part cross-reference older EPA regulations that apply to MSW landfills for which the applicability threshold is 50 megagrams/year (Mg/yr) of non-methane organic compounds (NMOC) emissions. Those older EPA regulations do not apply to MSW landfills whose emissions of NMOC are below 50 Mg/yr but above the currently applicable threshold in Subpart Cf, 34 Mg/yr.[7] This discrepancy means that landfills in California with NMOC emissions greater than 34 Mg/yr but less than 50 Mg/yr would not be required to comply with the requirements of 40 CFR 60.34f, 60.36f, 60.37f, 60.38f, and 60.39f.[8]

Many of the rules cited by CARB are requirements for 40 CFR part 70 operating permit programs pursuant to title V of the CAA. Again, the EPA does not have the authority to incorporate California's local rules, regulations, and permit conditions into its state plan. Moreover, it is unclear whether a state's part 70 program or permit conditions—even if they were properly incorporated into a state plan—could provide the requisite elements for an approvable state plan.

In addition, CARB's comment included problematic requests to the EPA to take certain procedural steps regarding the submitted local rules. Again, the EPA lacks the authority to incorporate regulations into the California plan; only California can revise its plan by incorporating appropriate measures and then submit the revised plan to the EPA. The EPA can then review the revised plan as submitted to determine whether it is approvable.[9]

III. EPA Action

For the reasons discussed in our proposed action and above, as authorized in 40 CFR 60.27(b), the EPA is partially approving and partially disapproving the plan submitted by CARB. The EPA's partial approval of the California plan is limited to those landfills that meet the criteria established in subpart Cf.

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing regulatory text that includes the incorporation by reference of 17 CCR 95460–95476, (collectively, subarticle 6 entitled ''Methane Emissions from Municipal Solid Waste Landfills,'') operative June 17, 2010, which is part of the CAA section 111(d) plan applicable to existing MSW landfills in California as discussed in section I of this preamble. The regulatory provisions in 17 CCR 95460–95476 establish requirements to reduce air emissions of methane and other landfill gases from all MSW landfills located in California that received solid waste after January 1, 1977. The regulations include measures related to emission standards, installation of emission control systems, testing, monitoring, reporting, and recordkeeping provisions. The EPA has made, and will continue to make, the entire California plan generally available through *www.regulations.gov,* Docket No. EPA–R09–OAR–2019–0393, and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the plan is federally enforceable under the CAA, and is limited to those sources subject to 40 CFR part 60, subpart Cf, as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under

[4] 42 U.S.C. 7411(d)(1)(B) (state plans must ''provide[] for the implementation and enforcement of [] standards of performance'').

[5] 40 CFR 60.25(b) (state plans must include monitoring, recordkeeping, and reporting requirements).

[6] *See, e.g.,* 40 CFR 60.36f (''For approval, a state plan must include the compliance provisions in this section.'').

[7] Attachment A to CARB's letter indicates that many local rules cross-reference 40 CFR part 60, subparts Cc and WWW. The applicability threshold in subparts Cc and WWW is 50 Mg/yr NMOC. *See* 40 CFR 60.33c(e)(2)(i) and 60.752(b)(2), respectively.

[8] As a condition for state plan approval, subpart Cf requires that a state's regulations control emissions at 34 Mg/yr or higher, regardless of whether a state has landfills at 34 Mg/yr. The EPA estimates, however, that 15 to 20 landfills in California fall within the range of 34 Mg/yr to 50 Mg/yr. *See* Emission Inventory for year 2019: MSW Landfill Federal Plan.

[9] CARB's letter appears to acknowledge that additional procedural steps, at the state and/or local level, may be necessary for the local rules to be ''properly'' incorporated into the California plan. *See* CARB Letter at page 2 and Attachment A at page 8.

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 9, 2020. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

Dated: September 6, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart F—California

■ 2. Amend § 62.1100 by:

■ a. In paragraph (b)(3)(i) introductory text, removing ''rules;'' and adding ''rules.'' in its place;

■ b. Redesignating paragraphs (b)(3)(i)(*a*) through (*c*) as paragraphs (b)(3)(i)(A) through (C), respectively;

■ c. In paragraph (b)(3)(vi) introductory text, removing the semicolon and adding a period in its place;

■ d. Redesignating paragraphs (b)(3)(vi)(*a*) through (*d*) as paragraphs (b)(3)(vi)(A) through (D), respectively; and

■ e. Adding paragraphs (b)(7) and (d).

The additions read as follows:

§ 62.1100 Identification of plan.

* * * * *

(b) * * *

(7) State of California's Section 111(d) Plan for Existing Municipal Solid Waste Landfills, including 17 CCR 95460–95476 (collectively, subarticle 6 entitled ''Methane Emissions from Municipal Solid Waste Landfills,'') operative June 17, 2010, submitted on May 30, 2017 by the California Air Resources Board to implement 40 CFR part 60, subpart Cf. The Plan does not include provisions relating to 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5). The Plan includes the regulatory provisions cited in paragraph (d) of this section, which the EPA incorporates by reference.

* * * * *

(d)(1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the material at the EPA Region 9 office, 75 Hawthorne Street, San Francisco, CA 94105, 415–947–8000 or from the source listed in paragraph (d) of this section. Copies may be inspected 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: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) State of California, Barclays Official California Code of Regulations.

(i) 17 CCR, Division 3. Air Resources, Chapter 1. Air Resources Board, Subchapter 10. Climate Change, Article 4. Regulations to Achieve Greenhouse Gas Emission Reductions, Subarticle 6. Methane Emissions from Municipal Solid Waste Landfills, sections 95460–95476, operative June 17, 2010.

(ii) [Reserved]

■ 3. Section 62.1115 is revised to read as follows:

§ 62.1115 Identification of sources.

(a) The plan in § 62.1100(b)(5) applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, as described in 40 CFR part 60, subpart Cc.

(b) The plan in § 62.1100(b)(7) applies to existing municipal solid waste landfills that commenced construction, modification or reconstruction on or before July 17, 2014.

(1) After February 10, 2020, the substantive requirements of the municipal solid waste landfills State plan are contained in paragraph (b) of this section and owners and operators of municipal solid waste landfills in

California must comply with the requirements in paragraph (b) of this section.

(2) [Reserved]

(c)(1) The effective date of the plan in § 62.1100(b)(5) by the California Air Resources Board for municipal solid waste landfills is November 22, 1999.

(2) The effective date of the plan in § 62.1100(b)(7) by the California Air Resources Board for municipal solid waste landfills is February 10, 2020.

[FR Doc. 2019–28235 Filed 1–8–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R04–OAR–2018–0186; FRL–9997–01–Region 4]

Tennessee; Approval of Plan for Control of Emissions From Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state plan submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on May 12, 2017, and supplemented on February 9, 2018, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units. The State plan provides for implementation and enforcement of the EG, as finalized by EPA on June 23, 2016, applicable to existing CISWI units for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced after June 4, 2010, but no later than August 7, 2013. The State plan establishes emission limits, monitoring, operating, recordkeeping, and reporting requirements for affected CISWI units. Since all the CISWI units in the State are located at the Eastman Chemical Company in Kingsport, Tennessee, the State has issued the facility an operating permit, the terms of which are the relevant provisions of the EG, and has submitted the permit as part of its State plan.

DATES: This rule will be effective February 10, 2020. The incorporation by reference of documents listed in this rule is approved by the Director of the Federal Register as of February 10, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0186. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy form at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Bloeth, Communities and Air Toxics Section, Air Analysis and Support Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. Mr. Bloeth can be reached via telephone at 404–562–9013 and via email at *bloeth.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the Clean Air Act (CAA or the Act) directs the Administrator to develop regulations under that section and section 111(d) of the Act limiting emissions of nine air pollutants (particulate matter, carbon monoxide, dioxins/furans, sulfur dioxide, nitrogen oxides, hydrogen chloride, lead, mercury, and cadmium) from four categories of solid waste incineration units: municipal solid waste incinerators; hospital, medical, and infectious solid waste incinerators; commercial and industrial solid waste incinerators; and other solid waste incinerators.

On December 1, 2000, EPA promulgated new source performance standards (NSPS) and EG to reduce air pollution from CISWI units, which are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. *See* 65 FR 75338. EPA revised the NSPS and EG for CISWI units on March 21, 2011. *See* 76 FR 15704. Following promulgation of the 2011 CISWI rule, EPA received petitions requesting that EPA reconsider numerous provisions in the rule. EPA granted reconsideration on certain issues and, subsequently, on February 7, 2013, EPA promulgated a CISWI reconsideration rule. *See* 78 FR 9112. Subsequently, EPA received petitions to reconsider certain provisions of the NSPS and EG for CISWI units. On January 21, 2015, EPA granted reconsideration on four specific issues and subsequently, on June 23, 2016, EPA finalized reconsideration of the CISWI NSPS and EG. *See* 81 FR 40956.

Section 129(b)(2) of the CAA requires states to submit to EPA for approval state plans and revisions that implement and enforce the EG—in this case, 40 CFR part 60, subpart DDDD. State plans and revisions must be at least as protective as the EG, and become federally enforceable upon approval by EPA. The procedures for submittal and adoption of state plans and revisions are codified in 40 CFR part 60, subpart B.

On May 12, 2017, Tennessee submitted a state plan to implement and enforce the EG for existing CISWI units in the State, with a supplement submitted on February 9, 2018.[1] In a notice of proposed rulemaking published on May 31, 2018 (83 FR 24960), EPA proposed to approve Tennessee's State plan. Additional information concerning Tennessee's State plan submission and the rationale for EPA's actions for this final rule are explained in the May 31, 2018, proposed rulemaking. Comments on the proposed rulemaking were due on or before July 2, 2018. EPA received no comments.

II. Final Action

EPA is taking final action to approve Tennessee's State plan to implement and enforce the EG for existing CISWI units in the State, as submitted on May 12, 2017, and supplemented on February 9, 2018. EPA is taking this action because it has concluded that Tennessee's State plan is consistent with sections 111(d) and 129 of the CAA. As part of this action, EPA is incorporating by reference Tennessee Operating Permit number 072397, as issued on May 10, 2017. Permit number 072397 includes emission limits, operating limits, monitoring requirements, recordkeeping requirements, reporting requirements, and operator training and qualification requirements applicable to affected CISWI units. EPA has made, and will continue to make, these documents available through *www.regulations.gov*

[1] The submitted State plan does not apply in Indian country located in the State.

and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of the preamble for more information).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided they meet the criteria and objectives of the CAA and EPA's implementing regulations. Accordingly, this action merely approves state law as meeting federal requirements and, although the plan is federally enforceable, this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). And it does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because EPA is not approving the submitted rule to apply in Indian country located in the state, and because the submitted rule will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Incorporation by Reference, Intergovernmental relations, Manufacturing, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Authority: 42 U.S.C. 7411.

Dated: December 10, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart RR—[Amended]

■ 2. In subpart RR, remove the undesignated center heading ''Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan''.

■ 3. Revise § 62.10630 to read as follows:

§ 62.10630 Identification of sources.

(a) *Approval of State Plan for Commercial and Industrial Solid Waste Incineration Units.* Effective February 10, 2020, EPA approved Tennessee's State Plan for Commercial and Solid Waste Incineration Units, which is codified at Tennessee Operating Permit number 072397, as issued on May 10, 2017. The plan applies to each existing commercial and industrial solid waste incineration unit and air curtain incineration unit in the State of Tennessee that commenced construction on or before June 4, 2010, or commenced modification or construction after June 4, 2010, but no later than August 7, 2013, as such incineration units are defined in 40 CFR 60.2875 and 40 CFR part 60.

(b) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004 or U.S. EPA, Region 4, Air Analysis and Support Branch, 61 Forsyth Street, Atlanta, GA 30303. The telephone number for the Public Reading Room is (202) 566–1744. Copies may be inspected 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: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) State of Tennessee, Air Pollution Control Board, Department of Environment and Conservation.

(i) Permit Number 072397, Issued to Eastman Chemical Company, Tennessee Operation (MSOP–02), Date Issued May 10, 2017.

(ii) [Reserved]

[FR Doc. 2019–27690 Filed 1–8–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 19–90; FRS 16384]

TRS Modernization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, The Federal Communications Commission (FCC or Commission) takes action to update the Commission's definition of telecommunications relay service (TRS) in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).

DATES: *Effective Date:* This rule is effective February 10, 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 19–90, adopted on September 18, 2019, released on September 20, 2019, in CG Docket No. 03–123. The Commission previously sought comment on this issue in the Further Notice of Proposed

Rulemaking (*TRS Definition FNPRM*), published at 79 FR 62875, October 21, 2014. A Further Notice of Proposed Rulemaking contained in document FCC 19–90 is published elsewhere in this issue of the **Federal Register**. The full text of document FCC 19–90 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 19–90 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 19–90 does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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. *Statutory Definition of TRS.* The original version of 47 U.S.C. 225, enacted in 1990, defined TRS as telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. This definition was incorporated into the Commission's rules.

2. In 2010, Congress amended the statutory definition of TRS to remove the specification that one of the parties to a TRS call must be a hearing person. As amended, TRS means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

3. The Commission amends the definition of TRS contained in the Commission's rules to conform to the current statutory definition, as amended by the CVAA. The amended rule does not authorize compensation for every call between two individuals with hearing or speech disabilities. In most cases, people using the same form of TRS can understand each other without additional help from a relay service. For example, a call between two registered video relay service (VRS) users, in which both parties use video to sign to each other, would not require any help from a communications assistant (CA) and would not be eligible for compensation from the TRS Fund. The same applies to calls between two TTY users or between two users of IP Relay. An exception to this same-relay-service rule applies, however, when more than one person on a call uses captioned telephone service (CTS), internet Protocol captioned telephone service (IP CTS), or speech-to-speech service (STS). This is because calls between or among CTS, IP CTS, or STS users may still require captioning or re-voicing using more than one relay leg to ensure that one party's speech can be understood by the other party. Specifically, for calls between or among CTS and IP CTS users, each party requires captioning by a CA or automated speech recognition (ASR) system in order to understand what the other party says to that user. Similarly, for calls between or among STS users, each party must have their speech re-voiced in order for the other party to understand what the first party says.

Final Regulatory Flexibility Analysis

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

Need for, and Objectives of, the Rules

5. The Report and Order updates the Commission's definition of TRS to align the definition with changes made by the CVAA to the 47 U.S.C. 225(a)(3) definition.

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

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

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

7. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed rules in this proceeding.

Small Entities Impacted

8. The rules adopted in the Report and Order will affect obligations of TRS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

9. The revised definition for TRS does not create direct reporting, recordkeeping or other compliance requirements on TRS providers.

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

10. Conforming the Commission's definition of TRS to align the definition with the changes made by the CVAA to the statutory section 225(a)(3) definition will have no impact on TRS providers, because the amendment to the Commission's rules will not change the current practice of allowing compensation for TRS calls that fit within the statutory definition.

Ordering Clauses

11. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, document FCC 19–90 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.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR 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 § 64.601 by revising paragraph (a)(39) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(39) *Telecommunications relay services (TRS).* Telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

* * * * *

[FR Doc. 2019–28445 Filed 1–8–20; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Case 2016–G502; Docket No. GSAR–2019–0019; Sequence No. 1]

RIN 3090–AK14

General Services Administration Acquisition Regulation (GSAR); Submission and Distribution of Federal Supply Schedule (FSS) Price Lists

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Direct final rule with request for comments.

SUMMARY: This direct final rule amends the General Services Administration Acquisition Regulation (GSAR) to update GSAR clauses applicable to the submission and distribution of Federal Supply Schedule (FSS) Price Lists.

DATES: *Effective Date:* This final rule is effective on March 9, 2020 without further notice unless adverse comments are received by February 10, 2020. If GSA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments in response to GSAR Case 2016–G502 by any one of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''GSAR Case 2016–G502.'' Select the link ''Submit a Comment'' that corresponds with ''GSAR Case 2016–G502.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''GSAR Case 2016–G502'' on your attached document. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Mandell/GSAR 2016–G502, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2016–G502, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, Procurement Analyst, at *gsarpolicy@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2016–G502.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is amending the General Services Administration Acquisition Regulation (GSAR) at part 552, Solicitation Provisions and Contract Clauses, to update and bring current practices for submitting and distributing FSS Price Lists. Specifically, GSA is amending clauses 552.238–77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists, and 552.23–82, Modifications (Federal Supply Schedules).

Currently, regulations reference submission of paper copies of the Authorized FSS Price List for approval by the contracting officer, and distribution of paper copies to a designated mailing list. This is no longer in line with current practices.

Under this rule, the contractor will submit its FSS price list on a common-use electronic medium as prescribed by GSA. Eligible ordering activities will utilize GSA's online shopping and ordering system to review a contractors' price lists.

Updating regulations applicable to the submission and distribution of FSS price lists as described under the rule has many benefits, which include:

The elimination of duplicative requirements related to the submission of paper price lists;

The elimination of requirements to distribute paper price lists to a customer mailing list; and

Streamlined requirements for price lists that are consistent with current practices and can accommodate the continued modernization of the FSS Program.

II. Authority for This Rulemaking

Title 41 United States Code (U.S.C.) 152(3) authorizes GSA to establish procedures for the FSS Program. GSA's FSS procedures are deemed to meet the Competition in Contracting Act (CICA) requirement of full and open competition as long as participation has been open to all responsible sources; and orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government.

This is also consistent with the Federal Acquisition System and its principle to minimize administrative operating costs (Federal Acquisition Regulation (FAR) 1.102(b)(2)). The Federal Acquisition System is designed to deliver the best value product or service to the customer in terms of cost, quality, and timeliness.

By eliminating duplication and streamlining the requirements for price lists, GSA is making it easier to do business with the Government.

III. Executive Orders 12866 and 13563

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

IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a

significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

The General Services Administration does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Though, the elimination of regulations applicable to the submission and distribution of FSS price lists will yield positive benefits for small businesses.

Therefore, a Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2016–G502), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply because the direct final rule impacts two clauses with information collection requirements. However, these clause revisions do not impose additional information collection requirements to the burden previously approved under existing OMB Control Number 3090–0302.

List of Subjects in 48 CFR Part 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR part 552 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Revise section 552.238–77 to read as follows:

552.238–77 Submission and Distribution of Authorized Federal Supply Schedule Price Lists.

As prescribed in 538.273(d)(1), insert the following clause:

Submission and Distribution of Authorized Federal Supply Schedule Price Lists (FEB 2020)

(a) The Contractor shall submit its Authorized Federal Supply Schedule Price List on a common-use electronic medium as prescribed by GSA. Some structured data entry in a prescribed format may be required.

(b) Eligible ordering activities will utilize GSA's online shopping and ordering system to review a Contractors' price lists.

End of Clause

552.238–82 [Amended]

■ 3. Amend section 552.238–82 by—

■ a. Removing from paragraph (b)(3) ''Contractor shall submit'' and adding ''Contractor shall transmit'' in its place (twice), respectively;

■ b. In Alternate I:

■ i. Removing from the introductory text ''paragraph (f)'' and adding ''paragraph (e)'' in its place; and

■ ii. Redesignating paragraph (f) as paragraph (e).

[FR Doc. 2019–28016 Filed 1–8–20; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register
Vol. 85, No. 6
Thursday, January 9, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2019–0195]

RIN 3150–AK38

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® System, Certificate of Compliance No. 1031, Amendment No. 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International, Inc. (NAC) MAGNASTOR® System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1031. Amendment No. 8 revises the technical specifications to delete Technical Specification A5.6 and revise the maximum pellet diameter in the technical specifications, Appendix B, Table B2–3, from 0.325 inches to 0.3255 inches for the CE16H1 hybrid fuel assembly, which includes Combustion Engineering 16×16 fuel assemblies.

DATES: Submit comments by February 10, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or Edward M. Lohr, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–0253; email: *Edward.Lohr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Plain Writing
V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0195 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–2019–0195.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2019–0195 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on March 24, 2020. However, if the NRC receives significant adverse comments on this proposed rule by February 10, 2020, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate

a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008, that approved the NAC MAGNASTOR® System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1031 (73 FR 70587).

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through the following method.

Document	ADAMS Accession No.
Submission of NAC International MAGNASTOR® System Thermal Performance Test Data Satisfying the Requirements of Certificate of Compliance, Appendix A, Section 5.6, September 12, 2018	ML18257A079
NRC Letter, Receipt of Test Data for Thermal Performance Test for MAGNASTOR® System for Certificate of Compliance No. 1031—Acknowledgment Letter, October 25, 2018	ML18299A008
Letter from NAC International Transmitting Amendment No. 8 Request and Supplement Information, November 2, 2018	ML18331A180
NRC Letter, Application for Amendment No. 8 Request for Additional Information, February 22, 2019	ML19056A057
Letter from NAC International Transmitting Supplement to Amendment No. 8 Request, June 14, 2019	ML19171A269
Letter from NAC International Transmitting Supplement to Amendment No. 8 Request, July 16, 2019	ML19199A151
Memorandum to J. Cai re: User Need for Rulemaking for Amendment No. 8, September 26, 2019	ML19228A239
Proposed Certificate of Compliance No. 1031 Amendment No. 8, Technical Specifications, Appendix A	ML19228A235
Proposed Certificate of Compliance No. 1031 Amendment No. 8, Technical Specifications, Appendix B	ML19228A236
Draft Certificate of Compliance 1031, Amendment No. 8	ML19228A237
Certificate of Compliance No. 1031 Amendment No. 8, Preliminary Safety Evaluation Report	ML19228A238

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2019–0195. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2019–0195); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

Dated at Rockville, Maryland, this 13th day of December 2019.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2019–28374 Filed 1–8–20; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0693; FRL–10003–95–Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''the District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), and particulate matter (PM) from wood burning devices. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by February 10, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0693 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4118 or by email at *kay.rynda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters	06/20/2019	07/22/2019

On November 21, 2019, the EPA determined that the submittal for SJVUAPCD Rule 4901 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 4901 into the SIP on October 6, 2016 (81 FR 69393). The SJVUAPCD adopted revisions to the SIP-approved version on June 20, 2019, and CARB submitted them to us on July 22, 2019.

C. What is the purpose of the submitted rule revision?

Emissions of VOCs and NO_X contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10}), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control VOC, NO_X, and PM emissions.

Rule 4901 is designed to limit emissions of these pollutants generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and on the advertising of wood for sale within the San Joaquin Valley Air Basin (San Joaquin Valley).

The SIP-approved rule includes a two-tiered, episodic wood burning curtailment requirement. During a level one episodic wood burning curtailment, which is triggered when the $PM_{2.5}$ concentration is forecasted to be between 20–65 micrograms per cubic meter (μg/m³), operation of wood burning fireplaces and unregistered wood burning heaters is prohibited, but properly operated wood burning heaters that meet certification requirements and have a current registration with the District may be used. Specific certification and registration requirements are outlined in the rule. During a level two episodic wood burning curtailment, which is triggered when the $PM_{2.5}$ concentration is forecasted to be above 65 μg/m³ or the PM_{10} concentration is forecasted to be above 135 μg/m³, operation of any wood burning device is prohibited. The SIP-approved rule was modified to lower the wood burning curtailment thresholds in the ''hot spot'' counties of Madera, Fresno, and Kern.[1] The level one $PM_{2.5}$ threshold for these counties was lowered from 20 μg/m³ to 12 μg/m³, and the level two $PM_{2.5}$ threshold was

[1] ''The hot spots are either new areas of gas utility or areas deemed to have persistently poor air quality.'' SJVUAPCD 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), Appendix J, 60.

lowered from 65 μg/m³ to 35 μg/m³. The curtailment thresholds for other counties in the San Joaquin Valley were not modified.

A contingency measure was added requiring that on and after sixty days following the effective date of EPA final rulemaking that the San Joaquin Valley Air Basin has failed to attain the 1997, 2006, or 2012 $PM_{2.5}$ national ambient air quality standards (NAAQS) by the applicable attainment date, the $PM_{2.5}$ curtailment levels for any county that has failed to attain the applicable standard will be lowered to the curtailment levels in place for hot spot counties.

Furthermore, the revised rule adds additional restrictions on the installation of wood burning devices, new requirements for fireplace and chimney remodel projects, additional requirements for residential real estate sales, non-seasoned wood to the list of prohibited fuel types, a new visible emissions limit for fireplaces and non-registered devices, and other editorial revisions to improve rule clarity.

The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is currently designated and classified as an Extreme 1-hour ozone nonattainment area and an Extreme 8-hour ozone nonattainment area under the 1997, 2008, and 2015 8-hour ozone NAAQS.[2] CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. While our stringency discussion below focuses on PM emissions, we are not aware of reasonably available controls for these sources for ozone precursors that are not also reasonably available controls for PM. In addition, because residential wood burning takes place in the winter months when ozone concentrations are lower and the probability of exceeding the ozone NAAQS is low, we do not believe it is necessary to assess RACM/RACT for ozone and its precursors independently from our assessment for $PM_{2.5}$.

San Joaquin Valley is designated and classified as a Serious nonattainment area for the 1997 annual and 24-hour $PM_{2.5}$ standards and the 2006 24-hour $PM_{2.5}$ standards (40 CFR 81.305). CAA section 189(b)(1)(B) requires Serious $PM_{2.5}$ nonattainment areas to implement best available control measures (BACM), including best available control technology (BACT),[3] within 4 years after reclassification of the area to Serious. Therefore, SJVUAPCD must implement BACM, including BACT, for $PM_{2.5}$ and $PM_{2.5}$ precursors.[4] Under the $PM_{2.5}$ SIP Requirements Rule, BACM is defined as:

> any technologically and economically feasible control measure that can be implemented in whole or in part within 4 years after the date of reclassification of a Moderate $PM_{2.5}$ nonattainment area to Serious and that generally can achieve greater permanent and enforceable emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ plan precursors from sources in the area than can be achieved through the implementation of RACM on the same source(s).[5]

In addition, SJVUAPCD must implement ''additional feasible measures'' for $PM_{2.5}$ and $PM_{2.5}$ precursors, which is defined as:

> any control measure that otherwise meets the definition of ''best available control measure'' (BACM) but can only be implemented in whole or in part beginning 4 years after the date of reclassification of an area as Serious and no later than the statutory attainment date for the area.[6]

Furthermore, SJVUAPCD has requested an extension of the attainment deadline for the 2006 $PM_{2.5}$ standards from 2019 to 2024 pursuant to CAA section 188(e).[7] One of the criteria that must be met for the EPA to grant such an extension is a demonstration that ''the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area.''[8] Accordingly, in order to receive an extension of the attainment deadline for the 2006 $PM_{2.5}$ standards, SJVUAPCD must implement most stringent measures (MSM) for $PM_{2.5}$ and $PM_{2.5}$ precursors.

San Joaquin Valley is designated and classified as a Moderate nonattainment area for the 2012 annual $PM_{2.5}$ standards. Therefore, under CAA sections 172(c)(1) and 189(a)(1)(C), SJVUAPCD must implement RACM, including RACT, for $PM_{2.5}$ and $PM_{2.5}$ precursors. Since BACM/BACT represents a more stringent and potentially more costly level of control than RACM/RACT,[9] we are not evaluating Rule 4901 for RACM/RACT separately from our evaluation from BACM/BACT. The EPA will address the overall RACM/RACT requirement for the SJVUAPCD 2012 $PM_{2.5}$ Moderate Nonattainment Area at a later date when we act on an attainment plan addressing the 2012 $PM_{2.5}$ NAAQS.

San Joaquin Valley is currently designated attainment for PM_{10}.[10] Accordingly, SJVUAPCD is not required to implement BACM/BACT or RACM/RACT for PM_{10} and PM_{10} precursors. Therefore, we are not currently evaluating Rule 4901 for compliance with BACM/BACT or RACM/RACT requirements for PM_{10}.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Strategies for Reducing Residential Wood Smoke'', EPA–456/B–13–001, March 2013.

We note that in this action we are not evaluating the contingency measure in section 5.7.4 of revised Rule 4901 for compliance with all requirements of the CAA and the EPA's implementing regulations that apply to such measures. We are proposing to approve this measure into the SIP because it strengthens the rule by providing a possibility of additional curtailment days, and thus potentially additional emissions reductions. We will evaluate whether this provision, in conjunction with other submitted provisions, meets the statutory and regulatory

[2] 40 CFR 81.305.

[3] CAA section 189(b)(1)(B) refers only to BACM, but EPA interprets this term to include BACT (see, *e.g.,* 80 FR 15340, 15404 (March 23, 2015)).

[4] $PM_{2.5}$ precursors are NO_X,VOC, sulfur dioxide and ammonia. We are not aware of any additional feasible controls for these pollutants that are not also feasible controls for direct $PM_{2.5}$ emissions, so we are not separately evaluating these pollutants in this action.

[5] 40 CFR 51.1000. See also 40 CFR 51.1010(a).

[6] Id.

[7] 2018 $PM_{2.5}$ Plan, 6–2.

[8] CAA section 188(e). See also 40 CFR 51.1010(b).

[9] 81 FR 58010, 58081 (August 24, 2016).

[10] 40 CFR 81.305.

requirements for contingency measures in future actions.

B. Does the rule meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, SIP revisions, and RACM/RACT, BACM/BACT, and MSM for $PM_{2.5}$ and $PM_{2.5}$ precursors. The rule requirements and applicability are clear, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance with Rule 4901 consistently. We propose to determine that our approval of the submittal would comply with CAA section 110(l), because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for reasonable further progress and attainment are met and the submitted SIP revision is at least as stringent as the rule previously approved into the SIP. CAA section 193 does not apply to this action because the submitted SIP revision does not weaken any SIP control requirement in effect before November 15, 1990.

In 2015, we conducted a detailed evaluation of the stringency of the 2014 version of Rule 4901, as compared with other wood burning rules and relevant guidance. Based on this evaluation, we proposed to determine that it implemented BACM/BACT for $PM_{2.5}$ for wood burning devices and to fully approve it. After reviewing and responding to comments on that proposal, we finalized a determination that the 2014 version of Rule 4901 implemented RACM/RACT and BACM/BACT for $PM_{2.5}$ for this source category and approved it into the SIP.[11] In the 2018 $PM_{2.5}$ Plan, the District conducted another review of the 2014 version of Rule 4901 compared with wood burning rules in several other jurisdictions and concluded that Rule 4901 was more stringent than each of the other rules ''when evaluated holistically.''

The 2019 amendments to Rule 4901 further strengthen the rule in several respects, as described in Section I.C above. Accordingly, we propose to find that the 2019 version of Rule 4901 implements RACM/RACT and BACM/BACT for $PM_{2.5}$ for this source category. We also propose to find that it implements MSM for $PM_{2.5}$ for this source category because, as a whole, it is as or more stringent than analogous local, state and federal rules and guidance. The TSD has more information on our evaluation.

C. The EPA's Recommendations to Further Improve the Rule

The TSD includes recommendations for the next time SJVUAPCD modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until February 10, 2020. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 16, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–28442 Filed 1–8–20; 8:45 am]

BILLING CODE 6560–50–P

[11] 81 FR 69393 (October 6, 2016).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 19–90; FRS 16385]

Telecommunications Relay Service Modernization

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) proposes to: Eliminate the outdated equal access and multiple billing options requirements from the TRS mandatory minimum standards and to streamline Commission processes by ceasing **Federal Register** publication of state requests for TRS program certification, while continuing to publish these certification applications in the Commission's electronic document management system and on the Commission's website.

DATES: Comments are due January 30, 2020. Reply comments are due February 13, 2020.

ADDRESSES: You may submit comments, identified by CG Docket No. 03–123, by either of the following methods:

- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/filings.* Follow the instructions for submitting comments.
- *Paper Filers:* 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.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* document FCC 19–90 at: *https://docs.fcc.gov/public/attachments/FCC-19-90A1.pdf.*

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 Notice of Proposed Rulemaking (*NPRM*), document FCC 19–90, adopted on September 18, 2019, released on September 20, 2019, in CG Docket No. 03–123. The Report and Order in document FCC 19–90 will be published elsewhere in the **Federal Register**. The full text of document FCC 19–90 is 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).

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* 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 (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex 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.

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* in document FCC 19–90 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. As required by section 225 of the Communications Act, as Amended (the Act), 47 U.S.C. 225, the Commission's rules prescribe mandatory minimum standards to ensure that TRS provides telephone service for people with hearing or speech disabilities that is functionally equivalent to voice communication service.

2. *Equal Access Requirement.* The Commission proposes to repeal the equal access requirement, which provides that ''TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users.'' The rule, which was adopted in 1991, reflects the prevailing telephone service practices at that time, when providers of telephone service generally assessed per-minute rates for long distance based on the distance and duration of the call, and long distance services were provided on an unbundled basis by competing interexchange carriers.

3. Today, voice telephone subscribers typically pay a bundled or flat rate for telephone service, without time or distance differentials for long distance calls, and the Commission has ceased to apply an equal access requirement to voice telephone service. Because the rule only requires equal access ''to the same extent that such access is provided to voice users'' and because the Commission has eliminated the equal access rule for non-legacy voice users, there are few, and ever-decreasing,

situations in which a TRS provider would actually be obligated to provide equal access under the current rule.

4. In this changed environment, the Commission believes special mandates regarding long distance carriage are no longer necessary in order to have parity with voice telephone users when making long distance calls. Additionally, the Commission finds credible that implementing this requirement can be confusing for consumers and cause delays in call set-up, and that it hinders the providers' ability to transition their platforms to more efficient IP-based networks—in accordance with the Act's mandate for the TRS program to take advantage of evolving technologies. Given changes in how consumers now acquire and pay for long distance services, the costs and burdens associated with this rule now appear to outweigh any remaining benefits. The Commission seeks comment on this proposal.

5. The Commission also proposes to clarify that, when TRS providers allow consumers to make long distance calls without incurring per-minute charges, such offerings do not constitute an impermissible financial incentive for TRS use. Although the Commission previously found that long distance discounts offered by TRS providers could constitute an impermissible financial incentive, that ruling was based on the premise that such discounts would cause the charges for long distance calls by TRS users to be lower than those for voice service users. In today's marketplace, the Commission believes the widespread bundling of long distance and local calling eliminates any risk that offering free long distance to TRS users would create an impermissible incentive to make long distance calls. The Commission seeks comment on this proposed clarification.

6. *Billing Options Requirement.* The Commission proposes to repeal the billing options requirement, which directs TRS providers to offer ''the same billing options (*e.g.,* sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services.'' As is the case with the equal access requirement, this TRS feature, which was also adopted in 1991, has become a burden with no associated public interest benefit. Given the widespread bundling of local and long distance calling and the disappearance of per-minute long distance charges, the Commission believes the future likelihood of any TRS provider assessing per-minute charges for wireline calls (and thereby triggering a possible need for billing options) is *de minimis.* Accordingly, alternative billing options no longer appear necessary for TRS users to achieve functionally equivalent service. Eliminating this obligation should make the provision of TRS more efficient because it will relieve TRS providers from the need to maintain obsolete features of circuit-switched networks at a time when they and others within the communications industry have been transitioning to IP-based platforms. The Commission seeks comment on this proposal.

7. ***Federal Register*** *Notice of State Requests for Certification.* The Commission proposes to cease **Federal Register** publication of the Commission's public notices of applications for certification of state TRS programs. The purpose of the Commission's certification process is to review the details of a state's TRS program to determine whether the state program makes intrastate TRS available in a manner that meets or exceeds the Commission's minimum standards, makes available adequate procedures and remedies for enforcing program requirements, and does not conflict with Federal law. In this certification process, the Commission does not make rules prescribing how state programs should operate; rather, it determines whether a state program meets the standards of the Commission's existing TRS rules. The Commission's review is ordinarily conducted based on the documentation submitted by a state, and no adjudicatory hearing is ordinarily needed to determine whether a state program merits certification.

8. **Federal Register** publication of state TRS program certification applications is not required by the Administrative Procedure Act. Moreover, for comparable Commission authorization processes, such as determinations on internet-based TRS certification applications and common-carrier applications for certificates of ''public convenience and necessity,'' **Federal Register** publication is not required by the Commission's rules. Nor is publication necessary for consistency with Commission practice in other areas.

9. In addition, while the Commission continues to believe that public input is important in assisting the Commission in its state certification determinations, providing electronic notice of such certification requests via public notice releases that are posted in the Commission's electronic documents system (EDOCS) and on the Commission's website should provide sufficient notice to enable interested members of the public to comment on an application, while at the same time preserving Commission resources associated with **Federal Register** publication. The Commission seeks comment on this proposal. In particular, the Commission seeks comment on whether use of the Commission's own public notice process would be sufficient to enable an informed Commission decision on state program authorization given the Commission's longstanding reliance on this public notice process for comparable types of applications.

Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in document FCC 19–90. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments specified in the **DATES** section. The Commission will send a copy of document FCC 19–90 to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

11. In document FCC 19–90, the Commission proposes to repeal the equal access requirement so that it is no longer applicable to any form of TRS. The Commission believes it is no longer necessary to provide TRS users with the ability to select their long distance carrier to get certain rates on their toll calls to achieve functional equivalency. The Commission also proposes to repeal the billing options requirement so that it is no longer applicable to any form of TRS. Given the increasing migration to telephone service bundles for local and long distance calls, the ability for TRS users to employ various billing options for toll calls no longer appears necessary to achieve functionally equivalent service. Eliminating this obligation will make the provision of TRS more efficient because it will relieve TRS providers of the need to maintain obsolete network features at a time when they and others within the communications industry are transitioning to IP-based platforms. In addition, the Commission proposes to eliminate the requirement for the Commission to publish in the **Federal Register** notice of applications for certification of state TRS programs and instead rely on the Commission's public notice release process.

Legal Basis

12. The authority for this proposed rulemaking is contained in sections 1, 2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225.

Small Entities Impacted

13. The rule changes proposed in document FCC 19–90 will affect obligations of non-internet based TRS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The Commission's proposals to delete the equal access and billing options requirements and to eliminate the requirement for the Commission to publish in the **Federal Register** notice of applications for certification of state TRS programs would not impose any additional reporting, record keeping, or other compliance requirements.

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

15. The proposals to eliminate the equal access and billing options requirements will reduce the burden on small entities subject to the rule. Such entities would no longer need to provide TRS users with the ability to select their long distance carrier or offer billing options, and the providers would no longer be required to configure their networks for such functionalities. Other small entities would not be affected.

16. The proposal to eliminate the requirement for the Commission to publish in the **Federal Register** notice of applications for certification of state TRS programs would have no impact on small entities because only the Commission is burdened by this obligation.

17. The Commission seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in document FCC 19–90. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to document FCC 19–90, in reaching its final conclusions and taking action in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

18. None.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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 paragraph (a)(3)(ii) and by removing and reserving paragraph (b)(3) to read as follows:

§ 64.604 Mandatory Minimum Standards.

(a) * * *

(3) * * *

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

* * * * *

(b) * * *

(3) [Remove and Reserve]

* * * * *

■ 3. Amend § 64.606 by revising paragraph (a)(1) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) *Documentation*—(1) *Certified state program.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned ''TRS State Certification Application.'' All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification.

* * * * *

[FR Doc. 2019–28444 Filed 1–8–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 85, No. 6

Thursday, January 9, 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

Submission for OMB Review; Comment Request

January 6, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by February 10, 2020. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Tart Cherries Grown in the States of MI, NY, PA. OR, UT, WA, and WI.

OMB Control Number: 0581–0177.

Summary of Collection: Marketing Order No. 930 (7 CFR part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Agricultural Marketing Agreement Act of 1937 authorizes the promulgation and amendment of marketing orders for certain agricultural commodities and the issuance of regulations thereof for the purpose of providing orderly marketing conditions in interstate and intrastate commerce and for improving returns to producers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. The Order is administered by an 18-member Board comprised of producers, handlers and one public member, plus alternates for each. The members will serve for a three-year term of office.

Need and Use of the Information: Various forms were developed by the Board for persons to file required information relating to tart cherry inventories, shipments, diversions and other needed information to effectively carry out the requirements of the Order. The information collected is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information. If information were not collected, it would eliminate needed data to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; Not-for-profit institutions.

Number of Respondents: 640.

Frequency of Responses: Reporting: Annually; Quarterly; On occasion.

Total Burden Hours: 741.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–00158 Filed 1–8–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Committee Meeting of the Codex Committee on Food Additives

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on January 21, 2020. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 52nd Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission, in Lanzhou, China, March 2–6, 2020. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 52nd Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for January 21, 2020, from 9:00–12:00 EST.

ADDRESSES: The public meeting will take place in Meeting Room 1A–001 and 1A–002 of the Wiley Auditorium of the U.S. Food and Drug Administration (FDA) Harvey H. Wiley Building, 5001 Campus Drive, College Park, MD 20740. Documents related to the 52nd Session of the CCFA will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings/en/.*

Dr. Paul Honigfort, U.S. Delegate to the 52nd Session of the CCFA, invites U.S. interested parties to submit their comments electronically to the following email address: *paul.honigfort@hds.hhs.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 52nd Session of the CCFA by conference

call, please use the call-in-number: 888–844–9904 and participant code 5126092.

Registration: Attendees may register to attend the public meeting by emailing *uscodex@usda.gov* by January 17, 2020. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above.

For Further Information about the 52nd Session of the CCFA, contact U.S. Delegate, Dr. Paul Honigfort, Consumer Safety Officer, Division of Food Contact Notifications, Office of Food Additive Safety, U.S. Food and Drug Administration, 5001 Campus Drive, College Park, MD 20740, phone: +1 (204) 402–1206; email: *paul.honigfort@fda.hhs.gov.*

For Further Information about the public meeting Contact: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone 202 720 7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Food Additives (CCFA) are:

(a) To establish or endorse permitted maximum levels for individual food additives;

(b) To prepare priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives;

(c) To assign functional classes to individual food additives;

(d) To recommend specifications of identity and purity for food additives for adoption by the Codex Alimentarius Commission;

(e) To consider methods of analysis for the determination of additives in food; and

(f) To consider and elaborate standards or codes for related subjects such as the labelling of food additives when sold as such.

The CCFA is hosted by China. The United States attends the CCFA as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 52nd Session of the CCFA will be discussed during the public meeting:

- Matters referred by the Codex Alimentarius Commission and other subsidiary bodies
- Matters of interest arising from FAO/WHO and from the 87th Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Proposed draft specifications for identify and purity of food additives arising from the 87th JECFA meeting
- Endorsement and/or revision of maximum levels for food additives and processing aids in Codex standards
- Alignment of the food additive provisions of commodity standards: Report of the Electronic Working Group (EWG) on Alignment
- *General Standard for Food Additives* (GSFA): Report of the EWG on the GSFA
- *General Standard for Food Additives* (GSFA): Proposals for new and/or revision of food additive provisions
- Continuation of the discussion on the relevant provisions for sweeteners associated with Note 161
- General information on the availability of data related to nitrates and nitrites
- Proposed draft revision to the *International Numbering System (INS) for Food Additives*
- Proposals for additions and changes to the Priority List of Substances proposed by evaluation by JECFA
- Other business and future work

Public Meeting

At the January 21, 2020 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Paul Honigfort, U.S. Delegate for the 52nd Session of the CCFA (see **ADDRESSES**). Written comments should state that they relate to activities of the 52nd Session of the CCFA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *https://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on December 19, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2020–00162 Filed 1–8–20; 8:45 am]

BILLING CODE; P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that Nan Ya Plastics Company (Nan Ya), a producer/exporter of polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan, did not sell subject merchandise at less than normal value during the period July 1, 2019 through June 30, 2018 (POR). In addition, we continue to find that Shinkong Materials Technology Corporation (SMTC) had no shipments of subject merchandise during the POR.

DATES: Applicable January 9, 2020.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2019, Commerce published the *Preliminary Results* for this administrative review.[1] We postponed the briefing schedule on October 10, 2019.[2] We issued a supplemental questionnaire to Nan Ya.[3] On November 13, 2019, Nan Ya submitted its response to the supplemental questionnaire.[4] We invited interested parties to comment on the *Preliminary Results*.[5] We have not received any comments or requests for a hearing from any party. Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

Final Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by SMTC and its affiliate Shinkong Synthetic Fibers Corporation (SSFC), we continue to determine that SMTC and SSFC had no shipments of the subject merchandise during the POR.

Final Results of Review

As noted above, Commerce received no comments concerning the *Preliminary Results*. We reviewed the information submitted in Nan Ya's BCSQR,[6] and find no reason to make changes to the *Preliminary Results*. As there are no changes from, or comments upon, the *Preliminary Results,* Commerce finds that there is no reason to modify its analysis and calculations.[7] Thus, we continue to find that sales of subject merchandise by Nan Ya were not made at less than normal value during the POR. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum.

The final weighted-average dumping margin for the period July 1, 2017 through June 30, 2018, for Nan Ya is as follows:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Nan Ya Plastics Corporation	0.00

Assessment Rates

We have not calculated any assessment rates in this administrative review. For Nan Ya, we calculated a zero margin in the final results of this review. Therefore, in accordance with 19 CFR 351.212 we will instruct CBP to liquidate the appropriate entries without regard to dumping duties. For SMTC/SSFC, we determined that there were no shipments of the subject merchandise. Therefore, pursuant to Commerce's assessment practice, we will instruct CBP to liquidate any such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. Commerce intends to issue appropriate assessment instructions to CBP after the publication date of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Nan Ya will be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in 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 period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 2.40 percent, which is the all-others rate established by Commerce in the LTFV investigation.[8] These cash deposit requirements, when imposed,

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 48112 (September 12, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan—Briefing Schedule,'' dated October 10, 2019.

[3] *See* Commerce's Letter, ''2017–2018 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film): Second Supplemental Questionnaire,'' dated November 6, 2019.

[4] *See* Nan Ya's Letter, ''Polyethylene Terephthalate (PET) Film from Taiwan,'' dated November 13, 2019 (Nan Ya's BCSQR).

[5] *See* Memorandum, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan—Briefing Schedule,'' dated November 19, 2019.

[6] *See* Nan Ya's BCSQR.

[7] Consequently, we have not issued an Issues and Decision Memorandum to accompany these final results.

[8] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 44175 (July 15, 2002).

shall remain in effect until further notice.

Notification of 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 antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(b)(5).

Dated: January 3, 2020.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00147 Filed 1–8–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR048]

Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the North Jetty Maintenance and Repairs Project, Coos Bay, Oregon

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

ACTION: Notice; Issuance of Incidental Harassment Authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued incidental harassment authorizations (IHAs) to the U.S. Army Corps of Engineers (USACE) to incidentally harass, by Level B harassment only, marine mammals during pile driving and removal activities over two years associated with the Coos Bay North Jetty maintenance and repairs project.

DATES: These Authorizations are effective from September 1, 2020 through August 31, 2021 (pile driving removal (Year 1)) and July 1, 2022 through June 30, 2023 (pile driving installation (Year 2)).

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review. Under the MMPA, ''take'' is defined as meaning to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On March 18, 2019, NMFS received a request from USACE for two IHAs to take marine mammals incidental to vibratory pile driving and removal associated with the North Jetty maintenance and repairs project, Coos Bay, Oregon over the course of two years with pile installation occurring during Year 1 and pile removal occurring during Year 2. The application was deemed adequate and complete on September 10, 2019. The USACE's request was for take of a small number of seven species of marine mammals by Level B harassment only. Neither USACE nor NMFS expects injury, serious injury or mortality to result from this activity and, therefore, IHAs are appropriate. The USACE, in coordination with the Oregon Department of Fish and Wildlife (ODFW) and NMFS' Northwest Region, plans to conduct pile driving and removal October 1st through February 15th and June 1st and July 31st to minimize effects to listed salmonids. Adherence to the in-water work window is part of USACE's Endangered Species Act (ESA) consultation under Standard Local Operating Procedures for Endangered Species (SLOPES) to administer actions authorized or carried out by the USACE in Oregon (SLOPES IV In-water Over-water Structures). The ODFW will make the final determination of the in-water work window.

Description of Planned Activity

Coos Bay is an approximately 55.28 km² estuary located in Coos County on the Oregon coast, approximately 200 miles south of the Columbia River. The USACE plans to repair critically damaged sections of the North Jetty, monitor erosion, and to maintain stable deep-draft navigation through the entrance into Coos Bay. Repair activities completed now will reduce the risk of jetty failure or a potential breach of the Coos Bay North Spit (CBNS). The USACE maintains this jetty system and navigational channels, and is planning on conducting major repairs and rehabilitation of the North Jetty. The USACE plans to use vibratory pile driving/removal for the Material Off-loading Facility (MOF) portion of the

project using 30-inch (in) steel piles and 24-in AZ sheet piles OR 12-in H piles.

The USACE currently anticipates that construction for North Jetty maintenance and repair project will occur over two years. The IHA application is requesting take that may occur from the pile driving activities in the first year (September 1, 2020 through August 31, 2021) and from pile removal activities in the second year of pile driving activities (July 1, 2022 through June 30, 2023). The USACE proposes to complete pile driving activities between October 1st through February 15th and June 1st through July 31st each year to protect salmonids. There would be an estimate of 7 days of noise expose during pile driving/removal for each type of pile (*i.e.,* and 30-in steel piles and 24-in AZ sheet piles OR 12-in H piles) for a total of 14 days of pile driving/removal activity each year. Pile driving/removal may occur up to 6 hours per day depending on the pile type.

The purpose of the planned action is to repair critically damaged sections of the North Jetty in order to maintain stable deep-draft navigation through the entrance into Coos Bay and to prevent breaching of the CBNS. The planned activities would include repair activities for three main jetty components: The jetty head, root, and trunk. Repair activities also require re-establishment and repair of the following three temporary construction features including the MOF, upland staging areas and road turn-outs to facilitate equipment and material delivery. Removal and site restoration for each of the temporary construction features is planned. The majority of planned jetty repairs will be completed within the existing authorized footprint of the jetty structure, returning specified sections to pre-erosional conditions. The MOF Staging Area is where all pile driving and removal activities will occur. The type and amount of piles associated with the project are provided in Table 1.

TABLE 1—PILE DRIVING (YEAR 1) AND REMOVAL (YEAR 2) ASSOCIATED WITH THE MOF OF THE NORTH JETTY REPAIRS AND MAINTENANCE PROJECT. THE SAME NUMBER OF PILES DRIVEN IN YEAR 1 WILL BE REMOVED IN YEAR 2

Pile type	Size (inch)	Total number of piles to be driven (year 1)	Total number of piles to be removed (year 2)	Maximum number of piles driven per day (year 1)	Maximum number of piles removed per day (year 2)	Driving type
Steel Pipe Pile	30	24	24	6	6	Vibratory.
Steel H Pile	12	40	40	25	25	Vibratory.
Steel AZ Sheet	24	100	100	25	25	Vibratory.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (84 FR 56781; October 23, 2019). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Planned mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Mitigation* and *Monitoring and Reporting* section).

Comments and Responses

A notice of NMFS's proposal to issue IHAs to the USACE was published in the **Federal Register** on October 23, 2019 (84 FR 56781). That notice described, in detail, the USACE's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission).

Comment: The Commission believes that NMFS underestimated the number of takes for harbor seals. The Commission states that if NMFS was going to continue to use a density to estimate take that a haul out correction factor should be applied. However, this still may not account for seals that used the Southern Slough (most southern haul out site of the project area). The Commission recommends that NMFS authorize at least 167 Level B harassment takes of harbor seals on each of the 14 days that the proposed activities could occur for both authorizations using counts rather than densities to estimate the numbers of takes.

Response: In the proposed IHA, NMFS used the harbor seal density of 11.1 animals/km^2 which was based on the max number observed of seals observed (167 harbor seals) in November 2018 on the Clam Island haul out. This max number may or may not account for seals that also use the Southern Slough haul out site as well, which is just at the southern border of the project area, as the seals can utilize the entire bay. For consistency in the method used to calculate take across all pinnipeds, and to account for additional harbor seals that may be using the Southern Slough haul out, NMFS recalculated the estimated take for harbor seals using the maximum number of seals that could occur on a given day (167 seals) and multiplied that by 14 days for a total take estimate of 2,338 harbor seals each year.

Comment: The Commission states that it is unclear whether the USACE would keep a running tally of the extrapolated takes to ensure the authorized takes are not exceeded. The Commission notes that they do not believe that keeping track of only the observed takes is sufficient when the Level B harassment zones extend to more than 11 km and recommends adjusting the takes based on the extent of the Level B harassment zone based on the sighting distance and number of PSOs monitoring at a given time. The Commission recommends that NMFS ensure that the USACE keeps a running tally of the total takes for each species to comply with section 4(f) of the draft authorization (''If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed entering or within the Level B harassment zone (monitoring zone), pile driving and removal activities must shut down immediately using delay and shutdown procedures. Activities must not resume until the animal has been confirmed to have left the area or the 15 minute observation time period has elapsed.''). The Commission recommends that NMFS ensure that USACE keep a running tally of the total takes, both observed and extrapolated takes, for each species in the IHAs.

Response: We agree that USACE must ensure they do not exceed authorized takes. We have included in the authorization that Carnival must include extrapolation of the estimated takes by Level B harassment based on

the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in the draft and final reports.

Comment: The Commission recommends that NMFS refrain from using the proposed renewal process for the USACE's authorizations. The Commission stated that the renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses.

The Commission also commented that the additional 15-day comment period for Renewals places a burden on reviewers who will need to review the original authorization and numerous supporting documents and then formulate comments very quickly. Therefore, the Commission recommends and NMFS provides the Commission and other reviewers the full 30-day comment opportunity set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: We appreciate the Commission's input and direct the reader to our recent response to the same comment, which can be found at 84 FR 52464 (October 2, 2019), pg. 52466. If and when the USACE requests a Renewal, we will consider the Commission's comment further and address the concerns specific to this project.

Changes From the Proposed IHA to the Final IHA

Stock abundance updates to Table 2 (Marine Mammals Occurrence in the Project Area) were made for harbor porpoise, humpback whale, and blue whale as the 2019 draft Stock Assessment Reports published on November 27, 2019 (84 FR 65353). Minor corrections have been made to the estimated take table (see Table 8) and are described below. As described in the Comments and Responses section, Level B harassment takes were increased for harbor seals. To be more conservative, takes were slightly adjusted for California sea lions and Steller sea lions. Takes were increased from 1 to 3 California sea lions per day, and from 1 to 2 Steller sea lions per day. This increased the yearly total takes from 14 to 42 California sea lions and 14 to 28 for Steller sea lions. For Northern elephant seals, we reconsidered the method in which take was calculated and re-calculated takes using anecdotal information for Coos Bay. Northern elephant seals have not been observed in Coos Bay, rather nearby Cape Argo which is 6 km from the project area. For gray whales and harbor porpoise, NMFS recognizes that the densities only accounted for population growth up until 2019. NMFS adjusted this to account growth through 2022 as work for pile driving removal will begin in 2022. The estimated takes remain unchanged despite this correction.

Description of Marine Mammals in the Area of Specified Activities

Systematic marine mammal surveys in Coos Bay are limited; therefore, the USACE relied on two multi-day AECOM surveys of Coos Bay, Oregon Department of Fish and Wildlife (ODFW), and anecdotal reports to better understand marine mammal presence in Coos Bay and in support of the IHA application. Seven marine mammal species comprising seven stocks have the potential to occur within Coos Bay during the project.

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence around Coos Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All values presented in Table 2 are the most recent available at the time of publication and are available in the NMFS' draft 2019 SARs and final 2018 SARs for the U.S. Pacific and Alaska (*e.g.,* Carretta *et al.,* 2018, 2019; Muto *et al.,* 2018) (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Blue whale	*Balaenoptera m. musculus*	Eastern North Pacific Stock	E,D;Y	1,496 (0.44; 1,050; 2014)	1.23	1.84
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington Stock.	E,D;Y	2,900 (0.048 2,784; 2014)	16.7	42.1
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N, N	26,960 (0.05, 25,849, 2016)	801	139
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						

TABLE 2—MARINE MAMMALS OCCURRENCE IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Killer Whale	*Orcinus orca*	West Coast Transient	N, N	243 (-, 243, 2006) [4]	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern CA/Southern OR	N, N	24,195 (0.40, 17,447, 2011 and 2016).	349	≥0.2
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern elephant seal	*Mirounga angustirostris*	California breeding	N, N	179,000 (n/a, 81,368, 2010)	4,882	8.8
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	N, N	41,638 (-, 41,638, 2015)	2,498	108
California sea lion	*Zalophus californianus*	U.S	N, N	257,606 (n/a, 233,515, 2014)	14,011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Oregon/Washington Coast	N, N	24,732 (0.12, -, 1999) [5]	unk	unk

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The minimum population estimate (NMIN) for the West Coast Transient stock of killer whales is derived from mark-recapture analysis for West Coast transient population whales from the inside waters of Alaska and British Columbia of 243 whales (95 percent probability interval = 180–339) in 2006 (DFO 2009), which includes animals found in Canadian waters.

[5] Because the most recent abundance estimate is >8 years old (1999), there is no current estimate of abundance available for this stock. However, for purposes of this analysis, we apply the previous abundance estimate, corrected for animals missed in the water as described in Carretta *et al.* (2014) of 24,732.

All species that could potentially occur in the project area are included in Table 2. Humpback whales and blue whales are not uncommon along the Oregon coast, however, they are unlikely to enter Coos Bay and be affected by construction noise. Given these considerations, the temporary duration of potential pile driving, and noise isopleths that would not extend beyond the river mouth, there is no reasonable expectation for planned activities to affect these species and they are not discussed further.

A detailed description of the of the species likely to be affected by the project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 56781; October 23, 2019); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*), for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects from underwater noise from the USACE's pile driving and removal activities have the potential to result in Level B harassment only of marine mammals in the vicinity of the project area. The **Federal Register** notice for the proposed IHA (84 FR 56781; October 23, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice (84 FR 56781; October 23, 2019) for that information. No instances of serious injury or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through these IHAs, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to USACE's pile driving and removal activities could occur by Level B harassment only, as pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. The planned mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial

prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates for each IHA.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. The USACE's planned activities include the use of continuous, non-impulsive (vibratory pile driving) therefore, the 120 dB re 1 μPa (rms) is applicable.

Level A Harassment—NMFS' *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.,* sound pressure level (peak SPL) and sound exposure level (SEL) (also accounts for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best available science, and are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technicalguidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

where

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or

absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the similar environments recorded from underwater pile driving projects (CALTRANS 2015, WSDOT 2010) that were used to determine reasonable sound source levels likely result from the USACE's pile driving and removal activities (Table 4).

TABLE 4—PREDICTED SOUND SOURCE LEVELS FOR BOTH INSTALLATION AND REMOVAL OF PILES

Pile type	Sound source level at 10 meters dB_{RMS}
12-inch steel H-pile [1]	150
24-inch AZ steel sheet [1]	160
30-inch steel pipe pile [2]	164

[1] Average typical sound pressure levels referenced from Caltrans (2015) and were either measured or standardized to 10 m from the pile.
[2] Average sound pressure levels measured at the Vashon Ferry Terminal (WSDOT, 2010).

Level A Harassment

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as from vibratory pile driving), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet (Table 5), and the resulting isopleths are reported below (Table 6).

TABLE 5—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR VIBRATORY PILE DRIVING

[User spreadsheet input—vibratory pile driving spreadsheet Tab A.1 vibratory pile driving used]

	12-in H piles (install/removal)	24-in sheet piles (install/removal)	30-in piles (install/remove)
Source Level (RMS SPL)	150	160	164
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5
Number of piles within 24-hr period	25	25	6
Duration to drive a single pile (min)	10	10	60
Propagation (xLogR)	15	15	15
Distance of source level measurement (meters) +	10	10	10

TABLE 6—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS

User spreadsheet output		PTS isopleths (meters)				
		Level A harassment				
Activity	Sound source level at 10 m (dB SPL)	Low-frequency Cetaceans	Mid-frequency cetaceans	High-frequency Cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal						
12-in H pile steel installation/removal	150	3.3	0.3	4.8	2.0	0.1
24-in sheet pile installation/removal	160	15.2	1.3	22.4	9.2	0.6

TABLE 6—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS—Continued

User spreadsheet output		PTS isopleths (meters)				
		Level A harassment				
Activity	Sound source level at 10 m (dB SPL)	Low-frequency Cetaceans	Mid-frequency cetaceans	High-frequency Cetaceans	Phocid	Otariid
30-in pile installation/removal	164	35.7	3.2	52.8	21.7	1.5

Level B Harassment

Utilizing the practical spreading loss model, USACE determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at the distances shown in Table 7 for vibratory pile driving/removal. Table 7 below provides all Level B harassment radial distances (m) and their corresponding areas (km²) during the USACE's planned activities. It is undetermined whether sheet piles, H-piles, or a combination of the two will be used for MOF construction; therefore, the USACE estimated potential take based on the larger disturbance zone for Level B harassment (*i.e.,* for sheet pile—9.1 km²) for the 12-inch H pile Level B harassment zone.

TABLE 7—RADIAL DISTANCES (METERS) TO RELEVANT BEHAVIORAL ISOPLETHS AND ASSOCIATED ENSONIFIED AREAS (SQUARE KILOMETERS (km²)) USING THE PRACTICAL SPREADING MODEL

Activity	Received level at 10 m (dB SPL)	Level B harassment zone (m) *	Level B harassment zone (km²)
Vibratory Pile Driving/Removal			
12-inch H piles installation/removal	150	1,000	*9.1
24-inch sheet pile installation/removal	160	4,642	9.1
30-inch pile installation/removal	164	8,577	11.5

* (actual calculated zone is 2).

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to vibratory pile driving/removal for each acoustic threshold were estimated using group size estimates and local observational data to create a density estimate. As previously stated, take by Level B harassment only will be considered for this action. Distances to Level A harassment thresholds are relatively small and mitigation is expected to avoid Level A harassment from these activities.

Harbor Seals

Over the last several decades, intermittent and independent surveys of harbor seal haul outs in Coos Bay have been conducted. The most recent aerial survey of haulouts occurred in 2014 by ODFW. Those surveys were conducted during a time when the highest number of animals would be expected to haul out (*i.e.,* the latter portion of the pupping season (May and June) and at low tide). In 2014, 333 seals were observed at Coos Bay haulouts in June (Wright, pers comm., August 27, 2019).

AECOM conducted surveys vessel-based surveys in May/June 2017 and November 2018 from the Highway 101 Bridge to the seaward entrance to the Coos Bay estuary. In 2017, during the line transect surveys, there were an estimated 374 harbor seals counted in 19 groups with a relative density of 6.2 harbor seals/km. In 2018, because of the low number of harbor seals sightings during the line transect effort, reliable statistical estimates of species density could not be accurately calculated. However, for comparison with the May 2017 data, the number of seals observed/km yielded a sighting rate of 0.12 harbor seals/km.

AECOM also conducted three days of aerial (drone) flyovers at the Clam Island and Pigeon Point haulouts to capture aerial imagery during November and December 2018 to determine a fall/winter estimate for harbor seals. This aerial field effort observed a maximum of 167 harbor seals hauled out at Clam Island and 41 harbor seals hauled out at Pigeon Point on any one day. Based on these counts, an estimate of relative density was determined for the study area and ranged from 8.5–11.1 harbor seals/km².

The estimated take for each IHA was calculated using the maximum number of harbor seals (167) multiplied by the number of days per activity (*e.g.,* 7 days of vibratory pile driving/removal per pile type for a total of 14 days of pile driving/removal activity each year). Therefore, a total of 2,338 instances of take by Level B harassment are planned for harbor seals in both Year 1 for installation and in Year 2 for removal (Table 8). Because the Level A harassment zones are relatively small (21.7 m at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the Protected Species Observer (PSO) will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of harbor seals.

California Sea Lions and Steller Sea Lions

No data are available to calculate density estimates California sea lion and Steller sea lions; therefore, USACE considers likely occurrences in estimating take for California sea lions and Steller sea lions. As described in the *Description of Marine Mammals* section, no haul outs for California sea lions and Steller sea lions exist within Coos Bay where harassment from exposure to pile driving could occur, however, these species do haul out on

the beaches adjacent to the entrance to Coos Bay. These animals forage individually and seasonal use of Coos Bay have been observed, primarily in the spring and summer when prey are present. The estimate for daily California sea lion and Steller sea lions abundance (n = 1) was based on recent marine mammal surveys in Coos Bay (AECOM 2017). It is unclear, but possible that two California sea lions may have been seen in one day.

Therefore, to be conservative, we estimate three California sea lions and one Steller sea lion may be present each day of pile driving. We multiplied three California sea lions and one Steller sea lions by the number of days per activity (*e.g.,* 7 days of vibratory pile driving/removal per pile type for a total of 14 days of pile driving/removal activity each year). Therefore, a total of 42 and 28 instances of take by Level B harassment are planned for California sea lions and Steller sea lions respectively in both Year 1 for installation and in Year 2 for removal (Table 8). Because the Level A harassment zones are relatively small (Less than 2 m at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of California sea lions or Steller sea lions.

Northern Elephant Seals

Northern elephant seals have not been observed in Coos Bay, but at Cape Argo, a predominant haul out 6 km from Coos Bay jetties. It is unlikely Northern elephant seals will be in Coos Bay, but to be conservative, we estimate one Northern elephant seal may be present each day of pile driving. We multiplied one Northern elephant seal by the number of days per activity (*e.g.,* 7 days of vibratory pile driving/removal per pile type for a total of 14 days of pile driving/removal activity each year). Therefore, a total of 14 instances of take by Level B harassment are planned for Northern elephant seals in both Year 1 for installation and in Year 2 for removal (Table 8). Because the Level A harassment zones are relatively small (21.7-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of Northern elephant seals.

Killer Whales

It is not possible to calculate density for killer whales in Coos Bay as they are not present in great abundance; therefore, USACE estimates take based on likely occurrence and considers group size. During migration, the species typically travels singly or as a mother and calf pair. This species has been reported in Coos Bay only a few times in the last decade. The typical group size for transient killer whales is two to four, consisting of a mother and her offspring (Orca Network 2018). Males and young females also may form small groups of around three for hunting purposes (Orca Network 2018). Previous sightings in Coos Bay documented a group of five transient killer whales in May 2007 (as reported by the Seattle Times) and a pair of killer whales were observed during the 2017 May surveys. USACE assumes that a group of two killer whales come into Coos Bay and could enter a Level B harassment zone for one day in each year of pile driving/removal activities. Therefore, a total of two instances of take by Level B harassment are planned for killer whales in both Year 1 for installation and in Year 2 for removal (Table 8). Because the Level A harassment zones are relatively small (Less than a 4-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of killer whales.

Harbor Porpoise

It is not possible to calculate density for harbor porpoise in Coos Bay as they are not present in great abundance; therefore, USACE estimates take based on likely occurrence and considers group size. Harbor porpoise are most often seen singly, in pairs, or in groups of up to 10, although there are reports of aggregations of up to 200 harbor porpoises. No harbor porpoises were detected during recent marine mammal surveys within the Coos Bay estuary (AECOM 2017, 2018). However, harbor porpoises were counted during aerial surveys of marine mammals off the coasts of California, Oregon, and Washington. The maximum estimated count of harbor porpoises within approximately 1,700 km² of Coos Bay (n=24 in January 2011) was the basis for estimated abundance (Adams *et al.,* 2014). USACE applied a 4 percent annual population growth rate (NMFS 2013a) to approximate the relative abundance of harbor porpoises through 2022 (*i.e.,* n=37). Lastly, an estimated density of harbor porpoise was calculated across approximately 1,700 km² as a basis for determining the number of animals that could be present in Level B harassment zones during vibratory pile driving activities. This calculated density is 0.021 harbor porpoise/km². The estimated take was calculated using this density (0.021 animals/km²) multiplied by the area ensonified above the threshold (9.1 km² for sheet piles and 11.5 km² for 30-in piles) multiplied by the number of days per activity (*e.g.,* 7 days of vibratory pile driving/removal per pile type for a total of 14 days of pile driving/removal activity each year). Therefore, a total of four instances of take by Level B harassment are planned for harbor porpoise in both Year 1 for installation and in Year 2 for removal (Table 8). Because the Level A harassment zones are relatively small (a 52.8-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of harbor porpoise.

Gray Whales

It is not possible to calculate density for gray whales in Coos Bay as they are not present in great abundance; therefore, USACE estimates take based on likely occurrence and considers group size. Gray whales are frequently observed traveling alone or in small, unstable groups, although large aggregations may be seen in feeding and breeding grounds. The maximum estimated count of gray whales within approximately 1,700 km² of Coos Bay (n=10) was the basis for estimated abundance (Adams *et al.,* 2014). USACE then applied a 6 percent population growth rate (NOAA 2014b) to derive the current estimated abundance to approximate the relative abundance of gray whales through 2022 (*i.e.,* n=20). Lastly, an estimated density of gray whales was calculated across approximately 1,700 km² as a basis for determining the number of animals that could be present in Level B harassment zones during vibratory pile driving/removal activities. This calculated density is 0.0118 gray whales/km². The estimated take was calculated using this density (0.0118 animals/km²) multiplied by the area ensonified above the threshold (9.1 km² for sheet piles and 11.5 km² for 30-in piles) multiplied by the number of days per activity (*e.g.,* 7 days of vibratory pile driving/removal per pile type, for a total of 14 days of pile driving/removal activity each year).

Therefore, a total of two instances of take by Level B harassment are planned for gray whales in both Year 1 for installation and in Year 2 for removal (Table 8). Because the Level A harassment zones are relatively small (a 35.7-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of gray whales.

For both year 1 and year 2, Table 8 below summarizes the authorized take for all the species described above as a percentage of stock abundance.

TABLE 8—AUTHORIZED TAKE BY LEVEL B HARASSMENT AND AS A PERCENTAGE OF STOCK ABUNDANCE

Marine mammal	Level B harassment AZ sheets (or H-plies)	Level B harassment 30-inch piles	Level B harassment AZ sheets (or H-plies)	Level B harassment 30-inch piles	Total take by Level B harassment (percent by stock)	Total take by Level B harassment (percent by stock)
	YR–1 installation	YR–1 installation	YR–2 removal	YR–2 removal	YR–1 installation	YR–2 removal
Harbor seal (*Phoca vitulinai*)	1,169	1,169	1,169	1,169	2,338 (less than 4 percent)	2,338 (less than 4 percent).
Northern Elephant seal (*Mirounga angustirostris*).	7	7	7	7	14 (less than 1 percent)	14 (less than 1 percent).
Steller sea lion (*Eumetopias jubatus*).	14	14	14	14	28 (less than 1 percent)	28 (less than 1 percent).
California sea lion (*Zalophus californianus*).	21	21	21	21	42 (less than 1 percent)	42 (less than 1 percent).
Gray whale (*Eschrichtius robustus*).	1	1	1	1	2 (less than 1 percent)	2 (less than 1 percent).
Killer whale (*Orcinus orca*)	2		2		2 (less than 1 percent)	2 (less than 1 percent).
Harbor porpoise (*Phocoena phocoena*).	2	2	2	2	4 (less than 1 percent)	4 (less than 1 percent).

Planned Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are included in the planned IHAs:

Timing Restrictions

All work will be conducted during daylight hours. If poor environmental conditions restrict visibility full visibility of the shutdown zone, pile installation would be delayed.

Shutdown Zone for In-Water Heavy Machinery Work

For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Shutdown Zones

For all pile driving/removal activities, the USACE will establish shutdown zones for a marine mammal species that is greater than its corresponding Level A harassment zone. To be conservative, the USACE is plans to implement one cetacean shutdown zone (55 m) and one pinniped shutdown zone (25 m) during any pile driving/removal activity (*i.e.,* during sheet piles, H-piles, and 30-in steel pile installation and removal) (Table 9) which exceeds the maximum calculated PTS isopleths as described in Table 6. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

TABLE 9—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Shutdown zones (radial distance in m, area in km² *)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
In-Water Construction Activities					
Heavy machinery work (other than pile driving)	10 (0.00015)	10 (0.00015)	10 (0.00015)	10 (0.00015)	10 (0.00015)
Vibratory Pile Driving/Removal					
12-in H pile steel installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)
24-in sheet pile installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)
30-in pile installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)

* **Note:** km² were divided by two to account for land.

Non-Authorized Take Prohibited

If a species enters or approaches the Level B harassment zone and that species is either not authorized for take or its authorized takes are met, pile driving and removal activities must shut down immediately using delay and shutdown procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed for pinnipeds and small cetaceans and 30 minutes for large whales.

Based on our evaluation of the USACE's planned measures, NMFS has determined that the planned mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 min or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 min. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-min period. If a marine mammal is observed within the shutdown zone, pile driving activities will not begin until the animal has left the shutdown zone or has not been observed for 15 min. If the Level B Harassment Monitoring Zone has been observed for 30 min and no marine mammals (for which take has not been authorized) are present within the zone, work can continue even if visibility becomes impaired within the Monitoring Zone. When a marine mammal permitted for Level B harassment take has been permitted is present in the Monitoring zone, piling activities may begin and Level B harassment take will be recorded.

Monitoring Zones

The USACE will establish and observe monitoring zones for Level B harassment as presented in Table 7. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal). These zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, and thus prepare for potential shutdowns of activity. The USACE will also be gathering information to help better understand the impacts of their planned activities on species and their behavioral responses.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all pile driving/removal activities. In addition, PSO shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven/removed. Pile driving/removal activities include the time to install, remove a single pile or series of piles, as long as

the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Monitoring will be conducted by PSOs from on land and boat. The number of PSOs will vary from one to three, depending on the type of pile driving, method of pile driving and size of pile, all of which determines the size of the harassment zones. Monitoring locations will be selected to provide an unobstructed view of all water within the shutdown zone and as much of the Level B harassment zone as possible for pile driving activities. During vibratory driving or removal of AZ-sheets or H-piles, two PSOs will be present. One PSO will be located on the shoreline adjacent to the MOF site or on the barge used for driving piles. The other PSO will be boat-based and detect animals in the water, along with monitoring the three haulout sites in the Level B harassment zone *(i.e.,* Pigeon Point, Clam Island/North Spit, and South Slough). During vibratory driving and removal of steel pipe piles (30-in), three PSOs will be present. As indicated above, one PSO will be on the shoreline or barge adjacent to the MOF site. A second PSO will be stationed near the South Slough haul out site, and the third PSO will be boat-based and make observations while actively monitoring at and between the two remaining haulout sites (*i.e.,* Pigeon Point and Clam Island).

In addition, PSOs will work in shifts lasting no longer than 4 hours with at least a 1-hour break between shifts, and will not perform duties as a PSO for more than 12 hours in a 24-hour period (to reduce PSO fatigue).

Monitoring of pile driving shall be conducted by qualified, NMFS-approved PSOs, who shall have no other assigned tasks during monitoring periods. The USACE shall adhere to the following conditions when selecting PSOs:

- Independent PSOs shall be used (*i.e.,* not construction personnel);
- At least one PSO must have prior experience working as a marine mammal observer during construction activities;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience working as a marine mammal observer during construction; and
- The USACE shall submit PSO CVs for approval by NMFS for all observers prior to monitoring. The USACE shall ensure that the PSOs have the following additional qualifications:
- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and
- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

Reporting of Injured or Dead Marine Mammals

In the unanticipated event that the planned activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as serious injury, or mortality, the USACE must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources and the West Coast Region Stranding Coordinator. The report must include the following information:

- Time and date of the incident;
- Description of the incident;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with USACE to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USACE may not resume their activities until notified by NMFS.

In the event the USACE discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), the USACE must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. The report must include the same information as the bullets described above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the USACE to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that the USACE discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USACE must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

Final Report

The USACE shall submit a draft report to NMFS no later than 90 days following the end of construction activities or 60 days prior to the issuance of any subsequent IHA for the project. PSO datasheets/raw sightings data would be required to be submitted with the reports. The USACE shall provide a final report within 30 days following resolution of NMFS' comments on the draft report. Reports shall contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);

- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting:
  - Species, numbers, and, if possible, sex and age class of marine mammals;
  - Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zones, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
  - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
  - Type of construction activity that was taking place at the time of sighting;
  - Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
  - If shutdown was implemented, behavioral reactions noted and if they occurred before or after shutdown.
- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area within each monitoring period;
- A summary of the following:
  - Total number of individuals of each species detected within the Level B Harassment Zone, and estimated as taken if correction factor appropriate. Level B harassment takes must be extrapolated based upon the number of observed takes and the percentage of the Level B Harassment Zone that was not visible;
  - Total number of individuals of each species detected within the Level A Harassment Zone and the average amount of time that they remained in that zone; and
  - Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Harassment Zone, and estimated as taken, if appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses applies to all the species listed in Table 8, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For harbor seals, because there is thought to be a potential resident population and potential repeat takes of individuals, we provide a supplemental analysis independent of the other species for which we propose to authorize take. Also, because the both the number and nature of the estimated takes anticipated to occur are identical in years 1 and 2, the analysis below applies to each of the IHAs.

The USACE did not request, and NMFS is not authorizing, take in the form of injury, serious injury, or mortality. The nature of the work precludes the likelihood of serious injury or mortality, and the mitigation is expected to ensure that no Level A harassment occurs. For all species and stocks, any take would occur within a limited, confined area of any given stock's home range (Coos Bay). Take would be limited to Level B harassment only. Exposure to noise resulting in Level B harassment for all species is expected to be temporary and minor due to the general lack of use of Coos Bay by cetaceans and pinnipeds, as explained above. In general, cetacean and non-harbor seal pinnipeds are infrequent visitors with only occasional sightings within Coos Bay. Cetaceans such as transient killer whales may wander into Coos Bay; however, any behavioral harassment occurring during the project is highly unlikely to impact the health or fitness of any individuals, much less effect annual rates of recruitment or survival, given any exposure would be very brief with any harassment potential from the project decreasing to zero once the animals leave the bay. There are no habitat areas of particular importance for cetaceans (*e.g.,* biologically important area, critical habitat, primary foraging or calving habitat) within Coos Bay. Further, the amount of take authorized for any given stock is very small when compared to stock abundance, demonstrating that a very small percentage of the stock would be affected at all by the specified activity. Finally, while pile driving could occur year-round, pile driving would be intermittent (not occurring every day) and primarily limited to the MOF site, a very small portion of Coos Bay.

For harbor seals, the impact of harassment on the stock as a whole is negligible given the stocks very large size (70,151 seals). However, we are aware that it is likely a resident population of harbor seals resides year round within Coos Bay. While this has not been scientifically investigated through research strategies such as tagging/mark-recapture techniques, anecdotal evidence suggests some seals call Coos Bay home year-round, as suggested through AECOM's winter surveys. The exact home range of this potential resident population is unknown but harbor seals, in general, tend to have limited home range sizes. Therefore, we can presume that some harbor seals will be repeatedly taken. Repeated, sequential exposure to pile driving noise over a longer duration could result in more severe impacts to individuals that could affect a population; however, the limited number of non-consecutive pile driving days for this project means that these types of impacts are not anticipated. Further, these animals are already exposed, and likely somewhat habituated, to industrial noises such as USACE maintenance dredging, commercial shipping and fishing vessel traffic (Coos Bay contains a major port), and coastal development.

In summary, although this potential small resident population is likely to be taken repeatedly, the impacts of that take are negligible to the stock because the number of repeated days of exposure is small (14 or fewer) and non-consecutive, the affected individuals represent a very small subset of the stock that is already exposed to regular higher levels of anthropogenic stressors, injurious noise levels are not authorized, and the pile driving/

removal would not take place during the pupping season and during a time in which harbor seal density is greatest.

The following factors primarily support our determination that the impacts resulting from each of these two years of activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment is anticipated or authorized;
- The number and intensity of anticipated takes by Level B harassment is relatively low for all stocks;
- No biologically important areas have been identified for the effected species within Coos Bay;
- For all species, including the Oregon/Washington Coastal stock of harbor seals, Coos Bay is a very small part of their range; and
- No pile driving would occur during the harbor seal pupping season; therefore, no impacts to pups from this activity is likely to occur.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from each of the two years of planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The authorized take of seven marine mammal stocks comprises less than four percent of any stock abundance.

Based on the analysis contained herein of the planned activity (including the planned mitigation and monitoring measures) and the anticipated take of marine mammals, for each planned IHA, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, for both IHAs, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our planned action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. These actions are consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of these planned IHAs qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No take of ESA-listed marine mammals are authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Authorizations

As a result of these determinations, NMFS authorizes two IHAs to the USACE for pile driving and removal activities associated with the North Jetty maintenance and repairs project in Coos Bay, Oregon over the course of two non-consecutive years, beginning September 2020 through June 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 3, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–00122 Filed 1–8–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA006]

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 Whiting Advisory Panel and Committee 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 Monday, January 27, 2020 at 1 p.m.

ADDRESSES: The meeting will be held at the Portsmouth Harbor Event & Conference Center, 100 Deer Street at 22 Portwalk Place, Portsmouth, NH 03801; telephone: (603) 422–6114.

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 Whiting Advisory Panel and Committee will meet jointly to discuss the draft alternatives developed by the Plan Development Team to recommend alternatives to the Council during its January meeting. Other business will 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 these meetings. 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. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. 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.

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

Dated: January 6, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–00177 Filed 1–8–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Defense Intelligence Agency, National Intelligence University, Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors has been scheduled. The meeting is closed to the public.

DATES: Wednesday, January 8, 2020 (9:00 a.m. to 4:30 p.m.) and Thursday, January 9, 2020 (9:00 a.m. to 1:00 p.m.).

ADDRESSES: Defense Intelligence Agency 7400 Pentagon, ATTN: NIU, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Cameron, President, National Intelligence University, Bethesda, MD 20816, Phone: (301) 243–2118.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the National Intelligence University Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on January 8 through 9, 2020 of the National Intelligence University Board of Visitors. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose: The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Agenda: The following topics are listed on the National Intelligence University Board of Visitors meeting agenda: Welcome; President's Report; Board Orientation; Chair Remarks; Review of Findings and Recommendations from June 2019 meeting; NIU Provost Report; Academic Programs and Research Initiatives; Student Affairs; Accreditation; Resource Management and Organizational Modernization; Leadership and Management Program; IC Outreach and Student Recruitment; NIU Academic Centers and Programs; 2020 Goals; Review Charter; Executive Session; and Meeting with IC Senior Leaders.

The entire meeting is devoted to the discussion of classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Dated: January 6, 2020.

Aaron T. Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. 2020–00150 Filed 1–8–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0008]

Agency Information Collection Activities; Comment Request; Migrant Education Program Regulations and Certificate of Eligibility

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 9, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0008. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sarah Martinez, 202–260–1334.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Migrant Education Program Regulations and Certificate of Eligibility.

OMB Control Number: 1810–0662.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 121,658.

Total Estimated Number of Annual Burden Hours: 228,135.

Abstract: This collection of information is necessary to collect information under the Title I, Part C Migrant Education Program (MEP). The MEP is authorized under sections 1301–1309 of Part C of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). Regulations for the MEP are found at 34 CFR 200.81–200.89. This information collection covers regulations with information collection requirements that State educational agencies (SEAs) must collect in order to properly administer the MEP. Specifically, the regulations in 34 CFR 200.83, 200.84, 200.88, and 200.89(b)–(d). Most provisions do not require SEAs to submit the information collected to the Department, with the exception of the provisions under 34 CFR 200.89(b).

There is one additional MEP regulatory section, 34 CFR 200.85, which contains information collection requirements. Those information collection requirements, which pertain to the Migrant Student Information Exchange (MSIX), are covered by OMB No. 1810–0683.

Dated: January 3, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–00123 Filed 1–8–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–9–000]

City of Banning, California; Notice of Filing

Take notice that on December 20, 2019, the City of Banning, California submitted its tariff filing: City of Banning 2020 TRBAA and ETC Update to be effective 1/1/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 10, 2020.

Dated: January 3, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00134 Filed 1–8–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–11–000]

City of Pasadena, California; Notice of Filing

Take notice that on December 26, 2019, the City of Pasadena, California submitted its tariff filing: City of Pasadena 2020 TRBAA Update to be effective 1/1/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

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Comment Date: 5:00 p.m. Eastern Time on January 16, 2020.

Dated: January 3, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00135 Filed 1–8–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–8–000]

City of Colton, California; Notice of Filing

Take notice that on December 19, 2019, the City of Colton, California submitted its tariff filing: City of Colton 2020 TRBAA and ETC Update to be effective 1/1/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 9, 2020.

Dated: January 3, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00133 Filed 1–8–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–7–000]

City of Riverside, California; Notice of Filing

Take notice that on December 19, 2019, the City of Riverside, California submitted its tariff filing: City of Riverside 2020 TRBAA and ETC Update to be effective 1/1/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 9, 2020.

Dated: January 3, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00137 Filed 1–8–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–10–000]

City of Azusa, California; Notice of Filing

Take notice that on December 26, 2019, the City of Azusa, California submitted its tariff filing: City of Azusa 2020 TRBAA/ETC Update Filing to be effective 1/1/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 16, 2020.

Dated: January 3, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00136 Filed 1–8–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, January 14, 2020 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020–00258 Filed 1–7–20; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (FMC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget a request for an reinstatement of the existing collection requirements under 46 CFR part 535—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

DATES: Comments must be submitted on February 10, 2020.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725 17th Street NW, Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV,* Fax (202) 395–5806.

and to:

Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov*.

Please reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna Lee on 202–523–5800 or email: *omd@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Commission invites the general public and other Federal agencies to comment on the proposed information collection. On May 31, 2019, the Commission published a notice and request for comment in the **Federal Register** (84 FR 25275) regarding the agency's request for reinstatement from OMB for information collections as required by the Paperwork Reduction Act of 1995. The Commission received no comments on the request for reinstatement of OMB approval. The Commission has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR part 535—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

OMB Approval Number: 3072–0045 (Expired March 31, 2017).

Abstract: Section 4 of the Shipping Act of 1984, 46 U.S.C. 40301(a)–(c), identifies certain agreements by or among ocean common carriers (carriers) and marine terminal operators (MTOs) that fall within the jurisdiction of that Act. Section 5 of the Act, 46 U.S.C. 40302, requires that carriers and MTOs file those agreements with the Federal Maritime Commission. Section 6 of the Act, 46 U.S.C. 40304, 40306, and 41307(b)–(d), specifies the Commission actions that may be taken with respect to filed agreements, including requiring the submission of additional information. Section 15 of the Act, 46 U.S.C. 40104, authorizes the Commission to require that carriers and MTOs, among other persons, file periodic or special reports. Requests for additional information and the filing of periodic or special reports are meant to assist the Commission in fulfilling its statutory mandate of overseeing the activities of the ocean transportation industry. These reports are necessary so that the Commission can monitor agreement parties' activities to determine how or if their activities will have an impact on competition.

Type of Request: There are no changes to this information collection, and it is being submitted for reinstatement purposes only.

Needs and Uses: The Commission staff uses the information filed by agreement parties to monitor their activities as required by the Shipping Act of 1984. Under the general standard set forth in section 6(g) of the Act, 46 U.S.C. 41307(b)(1), the Commission must determine whether filed agreements are likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or to substantially lessen competition in the purchasing of certain covered services. If it is shown, based on information collected under this rule, that an agreement is likely to have the foregoing adverse effects, the Commission may bring suit in the U.S. District Court for the District of Columbia to enjoin the operation of that agreement. Other than an agreement filed under section 5 of the Act, the information collected may not be disclosed to the public except as may be relevant to an administrative or judicial proceeding, and disclosure to Congress.

Frequency: This information is collected generally on a quarterly basis or as required under the rules.

Type of Respondents: The types of respondents are ocean common carriers and MTOs subject to the Shipping Act of 1984.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 334 entities.

Estimated Time per Response: The approximate range of person hours per response, including preparation and filing, depends on its complexity, presented by category below:

Agreements and amendments not requiring form FMC–150: 6–25 hours.

Agreements and amendments requiring form FMC–150: 17–137 hours.

Terminations of Agreements: .25–.5 hours.

Filing of Agreement meeting minutes: 2–5 hours.

Filing of Monitoring Reports:

VOCC Rate Discussion Agreements: 71–120 hours.

Alliance Agreements: 60–155 hours.

Other reporting agreements: 5–75 hours.

Total Annual Burden: The Commission estimates the total annual burden at 15,655 hours.

Rachel Dickon,

Secretary.

[FR Doc. 2020–00116 Filed 1–8–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 10, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Pinnacle Financial Corporation, Elberton, Georgia;* to acquire SBT Bancorp, Inc., and thereby indirectly acquire Southern Bank & Trust, both of Clarkesville, Georgia.

Board of Governors of the Federal Reserve System, January 6, 2020.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2020–00185 Filed 1–8–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part J (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 82 FR 42555, dated September 8, 2017) is amended to reflect the reorganization of the Agency for Toxic Substances and Disease Registry. This reorganization will combine the programmatic, technical expertise and resources of two divisions into one.

I. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Division of Community Health Investigations (JAAM)
- Eastern Branch (JAAMB)
- Central Branch (JAAMC)
- Western Branch (JAAMD)
- Science Support Branch (JAAME)
- Division of Toxicology and Human Health Science (JAAN)
- Geospatial Research, Analysis and Services Program (JAAN12)
- Emergency Response Program (JAAN13)
- Environmental Epidemiology Branch (JAANB)
- Environmental Health Surveillance Branch (JAANC)
- Environmental Medicine Branch (JAAND)
- Environmental Toxicology Branch (JAANE)

II. Under Part C, Section C–B, Organization and Functions, make the following change:

- Update the functional statement for the Agency for Toxic Substances and Disease Registry (J)
- Update the functional statement for the Office of the Administrator (JA)
- Update the functional statement for the Office of the Director (JAA)
- Retitle the Office of Financial, Administrative, and Information Services to the Office of the Office of Management and Analytics (JAA2)
- Retitle the Office of Policy, Planning and Evaluation to the Office of Policy, Partnerships, and Planning (JAA3)
- Update the functional statements for the Office of Communication (JAA7)
- Establish the Office of Science (JAA9)
- Establish the Office of the Associate Director (JAAQ)
- Establish the Office of Innovation and Analytics (JAAQB)
- Establish the Office of Community Health Hazard Assessment (JAAQC)
- Establish the Office of Capacity Development and Applied Prevention Science (JAAQD)

III. Under Part C, Section C–B, Organization and Functions, insert the following:

- *Agency for Toxic Substance and Disease Registry (J).* The mission of the Agency for Toxic Substances and Disease Registry (ATSDR) is to protect communities from harmful health effects of hazardous waste sites and hazardous material spills. The ATSDR responsibilities are specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended in the Superfund Amendments and Reauthorization Act of 1986 and in amendments (Hazardous and Solid Waste Amendments of 1984) to the Resource Conservation and Recovery Act (RCRA). ATSDR works closely with state, tribal, territory, local, other federal agencies, and other organizations to reduce or eliminate illness, disability, and death that result from exposure of the public to toxic substances at spill and waste disposal sites. Through additional laws, ATSDR provides environmental support to other national efforts, such as the disposal of medical wastes. To carry out its CERCLA mission, ATSDR:

(1) Evaluates data and information on the release of hazardous substances into the environment to assess any current or future impact on public health, develops health advisories or other health recommendations, and identifies studies or actions needed to evaluate and mitigate or prevent adverse human health effects; (2) summarizes and interprets available data on the health effects of hazardous substances in consultation with the Environmental Protection Agency (EPA) and other programs and Public Health Service (PHS) agencies, and in cooperation with the National Toxicology Program, initiates toxicologic research to determine the health effects of designated hazardous substances, where needed; (3) provides health-related

support in public health emergencies, including public health advisories involving exposure to hazardous substances; (4) establishes and maintains a registry of persons exposed to chemical or disease specific hazardous substances and a registry of serious diseases and illnesses in persons exposed to specific toxic substances as a result of environmental exposure; (5) expands knowledge of the relationship between exposure to hazardous substances and adverse human health effects, through epidemiologic, toxicologic, laboratory, and human, animal, and other scientific studies on hazardous substances; (6) develops and disseminates to physicians and other health care providers informational materials on the health effects of toxic substances. To carry out its RCRA mission, ATSDR (1) provides immediate or short-term assistance to EPA regional and headquarters staff to provide health advice and health effect information about releases of hazardous substances at landfills and surface impoundments; and (2) conducts health assessments when environmental contamination has been found to pose a substantial potential risk to human health.

• *Office of the Administrator (JA).* (1) Directs and evaluates the programs and activities of the Agency; (2) provides leadership for implementing statutory responsibilities; (3) approves the Agency's goals and objectives; (4) provides overall policy direction to the scientific/medical program; (5) plans, promotes, and coordinates an ongoing program to assure equal employment opportunities; (6) provides leadership for and assessment of administrative management activities; (7) assures coordination with appropriate PHS staff offices and other relevant agencies for administrative and program matters, such as coordinating emergency response activities that involve action at the PHS level.

• *Office of the Director (JAA).* (1) Manages, directs, coordinates, and evaluates all health-related programs of the National Center for Environmental Health (NCEH) and ATSDR; (2) provides overall leadership in health-related activities for hazardous substances, hazardous waste sites and chemical releases; (3) provides overall coordination for the research programs and science policies of the agencies; (4) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (5) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support; (6) provides information, publication and distribution services to NCEH/ATSDR; (7) maintains liaison with other federal, state, and local agencies, institutions, and organizations; (8) coordinates NCEH/ATSDR program activities with other Centers for Disease Control and Prevention (CDC) components, other federal, state and local government agencies, the private sector, and other nations; and (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development.

• *Office of Management and Analytics (JAA2).* (1) Plans, manages, directs, and conducts the administrative and financial management operations of NCEH/ATSDR; (2) reviews the effectiveness and efficiency of administration and operation of all NCEH/ATSDR programs; (3) develops and directs systems for human resource management, financial services, procurement requisitioning, and travel authorization; (4) provides and coordinates services for the extramural award activities of NCEH/ATSDR; (5) formulates and provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support; (6) develops and directs a system for cost recovery; and (7) enables and supports NCEH/ATSDR data management, systems development, and information security needs; (8) develops and directs employee engagement programs; and (9) analyzes NCEH/ATSDR workforce, systems, and resources.

• *Office of Policy, Partnerships and Planning (JAA3).* (1) Coordinates, develops, recommends and implements strategic planning and tracking for NCEH/ATSDR; (2) develops and coordinates performance management to ensure achievement of goals in NCEH/ATSDR programs; (3) participates in reviewing, coordinating, and preparing legislation, briefing documents, Congressional testimony, and other legislative matters; (4) maintains liaison and coordinates with other federal agencies for program planning and performance; (5) assists in the development of NCEH/ATSDR budget and program initiatives; (6) provides liaison with staff offices and other officials of CDC; (7) monitors and prepares reports on health-related activities to comply with provisions of relevant legislation; (8) coordinates the development, review, and approval of Federal regulations, **Federal Register** announcements, Freedom of Information Act requests, Government Accountability Office and Department of Health and Human Services (HHS) Inspector General reports, and related activities; (9) develops and strengthens strategic partnerships with key constituent groups; and (10) facilitates communication between NCEH/ATSDR and its partners.

• *Office of Communication (JAA7).* (1) Serves as the principal advisor to the Assistant Administrator, director and divisions on communication and marketing science, research, practice, and public affairs; (2) leads agency strategic planning for communication and marketing science and public affairs programs and projects; (3) analyzes context, situation, and environment to inform agency-wide communication and marketing programs and projects; (4) ensures use of scientifically sound research for marketing and communication programs and projects; (5) ensures accurate, accessible, timely, and effective translation of science for use by multiple audiences; (6) leads identification and implementation of information dissemination channels; (7) provides communication and marketing project management expertise; (8) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that scientific findings and their implications for public health reach the intended audiences; (9) collaborates closely with divisions to produce materials tailored to meet the requirements of news and other media channels, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (10) coordinates the development and maintenance of accessible public information through the internet, social media and other applicable channels; (11) provides training and technical assistance in the areas of health communication, risk communication, social marketing, and public affairs; (12) manages or coordinates communication services such as internet/intranet, application development, social media, video production, graphics, photography, CDC name/logo use and other brand management; (13) provides editorial services, including writing, editing, and technical editing; (14) facilitates internal communication to agency staff and allied audiences; (15) supervises and manages Office of Communication activities, programs, and staff; (16) serves as liaison to internal and external groups to advance the agency's mission; (17) collaborates with the CDC Office of the Associate Director for Communication on media

relations, electronic communication, health media production, and brand management activities; (18) collaborates with the Center for Preparedness and Response and other NCEH/ATSDR entities to fulfill communication responsibilities in emergency response situations; (19) collaborates with other CDC Centers/Institute/Offices in the development of marketing communications targeted to populations that would benefit from a cross-functional approach; (20) ensures NCEH/ATSDR materials meet CDC and HHS standards.

• *Office of Science (JAA9).* (1) Ensures NCEH/ATSDR compliance with the various statutes, regulations, and policies governing the conduct of science by the federal government, including: Human subjects research determinations, the protection of human research subjects and the use of Institutional Review Boards (IRBs), the OMB Paperwork Reduction Act (relating to the collection of information from ten or more people in a 12-month period), the OMB Information Quality Bulletin, Confidentiality Protection, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, and its ''Privacy Rule''); and others; (2) develops and maintains the NCEH/ATSDR Clearance Policy and managing and conducting clearance for NCEH/ATSDR documents; (3) coordinates and manages document cross-clearance between NCEH/ATSDR and other parts of CDC; facilitating agency reviews of external documents, coordinating and managing information quality requests concerning NCEH/ATSDR documents; (4) coordinates and manages external peer review for NCEH/ATSDR documents and intramural programs; (5) coordinates and manages the activities of the NCEH/ATSDR Board of Scientific Counselors (a federal advisory committee and its subcommittees and workgroups; (6) coordinates interagency workgroups/committees such as the President's Task Force on Environmental Health Risks and Safety Risks to Children, and the National Toxicology Program Executive Committee; (7) coordinates and manages NCEH/ATSDR involvement in the Epidemic Intelligence Service (EIS) Program; (8) coordinates NCEH/ATSDR involvement in CDC public health ethics activities; (9) coordinates NCEH/ATSDR involvement in CDC science awards activities (*e.g.,* the Shepard Award, and CDC/ATSDR Honor Awards); (10) organizes and sponsors select training opportunities (*e.g.,* human subjects/IRB, OMB/PRA, and eClearance Training for Authors and Reviewers); (11) represents NCEH/ATSDR on various CDC/ATSDR committees, work groups, and task forces, such as the CDC/ATSDR Office of the Chief Science Officer's Excellence in Science Committee, and the CDC Surveillance Science Advisory Group; (12) coordinates NCEH/ATSDR global health activities; (13) coordinates and manages the NCEH/ATSDR Healthy People 2020; (14) prepares an annual inventory of NCEH/ATSDR publications; and (15) pursuant to the National Environmental Policy Act, reviews draft Environmental Impact Statements on behalf of HHS where the proposed federal actions impact human health.

• *Office of the Associate Director (JAAQ).* (1) Provides leadership in directing, coordinating, evaluating, and managing all programmatic and administrative operations of ATSDR; (2) develops programmatic goals and objectives and provides leadership, policy formation, and guidance in program planning, development, and evaluation; (3) coordinates activities with other components of ATSDR and other federal, tribal, state, and local agencies; (4) works with the Washington, DC regional office to ensure coordination with EPA at the national level; (5) ensures the quality and consistency in the science and format used in the development of products and materials; (6) develops outreach messages following the procedures and policies of the Agency's Office of Communications; (7) provides timely responses to policy activities (*i.e.,* FOIA, congressional inquiries, budget formulation, and briefings); (8) develops measures of divisional productivity and reports to the Agency and CDC director; (9) coordinates NCEH and ATSDR emergency management resources to support efforts to protect the public's health from environmental threats; (10) provides incident management and coordination for complex emergency management including the development, approval, and updating of standardized processes to enable appropriate and adequate management of resources; (11) develops, implements, and manages programs to enhance the emergency response readiness of CDC and other national, regional, state, local, and international public health programs; and (12) develops capacity within the states to integrate new and existing epidemiological and scientific principles into operational and programmatic expertise in emergency preparedness, response, and recovery and; (13) manages and conducts a records management program, including the National Archives and Records Administration standards, for ATSDR in accordance with Congressional mandate.

• *Office of Innovation and Analytics (JAAQB).* (1) Uses best practices to collect, analyze, and interpret data and disseminate scientific information to enable internal and external partners to make actionable decisions regarding exposure to hazardous substances; (2) provides analytical and modeling expertise, develops new analytical tools, and integrates the use of geospatial science in public health activities; (3) conducts environmental and biological computer simulation and other statistical modeling expertise to support internal and external stakeholders; (4) integrates geospatial science, data analytics and visualization, and manages processes, and analyzes data; (5) supports the CDC Emergency Operations Center as requested; (6) identifies, develops, and promotes new tools through authoring manuscripts, reports, and community-facing products as well as through leveraging new technologies in order to maintain and improve ATSDR's state of the art science practice; (7) develops toxicological profiles and repositories of data, conducts synthesis of research, evaluates methodological and programmatic best practices internal and externally, and conducts surveillance and registry programs; (8) coordinates the development of contaminant-specific information, and provides chemical-specific toxicologic consultations; (9) determines health guidelines which estimates the highest level of exposure to a toxic substance that is thought to not have adverse health effects, and exposure-dose reconstruction; (10) creates and maintains surveillance systems and registries to understand the relationship between toxic exposure and health; and (11) develops repository of programmatic methodological best practices through meta-analyses of ATSDR documents, databases, and analyses.

• *Office of Community Health Hazard Assessment (JAAQC).* (1) Conducts public health assessments, health consultations, and other related public health activities to determine the health implications of releases or threatened releases of toxic substances into the environment; in particular, such activities are conducted for Superfund and RCRA sites, petition requests, and other sites or instances where communities have been or may have been exposed to toxic substances in the environment; (2) plans, manages,

directs, and conducts the regional operations of the agency; (3) provides liaison, technical advice, and consultation to the EPA, other federal, tribal, state, and local agencies, private organizations, community groups, and individuals on eliminating or mitigating public health problems resulting from the release of hazardous substances into the environment; (4) conducts and evaluates exposure pathways analyses and other exposure screening analyses to identify impacted communities, to include exposure investigations (biologic sampling, personal monitoring, etc.), and related environmental assessments, as appropriate; (5) issues public health advisories when a release or threatened release of a toxic substance poses an imminent health hazard; (6) provides technical support and field presence for routine emergency and disaster response as appropriate; (7) engages with regional partners to accomplish special programs that promote environmental health; (8) provides scientific expertise in environmental epidemiology; (9) designs and conducts human health, including epidemiologic, studies to evaluate the association between exposure to hazardous substances and adverse health effects; (10) provides expert medical and environmental epidemiologic consultation; and (11) implements extramural research programs that involve human health investigations.

• *Office of Capacity Development and Applied Prevention Science (JAAQD).* (1) Builds capabilities by translating science into tools and actions that individuals, communities, and organizations apply to identify, reduce, or prevent health effects from exposures to hazardous substances; (2) coordinates and conducts training, community engagement, and system development that addresses internal and external needs as well as builds capacity of end-users; (3) develops best practices, tools, and strategies for engaging with communities, and providing community engagement consultation to internal ATSDR partners (*e.g.,* health educators); (4) conducts grant management, project officers' activities, and builds capacity development through strategy development, monitoring, and training; (5) serves as an incubator for new preventions, interventions, and implementation science; supports testing, development, and material design for community and health professional audiences; (6) designs and standardizes intervention initiatives for community audiences, evaluating intervention design methods, and designing education campaigns; (7) designs and standardize intervention initiatives for health professionals, evaluating intervention design methods, and promoting environmental health content within clinical education programs; (8) designs, reviews and evaluates the scientific accuracy and clarity of health education materials; (9) informs and promotes integration of environmental health content within clinical education programs (*e.g.,* coursework, clinical rotations, and primary care residency programs) and environmental medicine practice; (10) identifies and cultivates partnerships with academic and professional organizations to encourage uptake of environmental public health awareness curricula and career tracks; (11) develops community/population and clinical intervention initiatives to reduce risk factors associated with environmental exposures; (12) develops integrated clinical support guidance for patient care; (13) provides, promotes, and/or implements ATSDR-approved tools and training to partners (both internal [*e.g.,* health educators] and external [*e.g.,* state partners]) so that they can effectively engage communities using a standardized approach; (14) provides evaluation guidance and facilitates evaluation feedback loops related to ATSDR intervention initiatives, guidance materials, and support tools for continuous quality improvement and effectiveness of grant-supported work; (15) implements ATSDR's Site-Specific Cooperative Agreement Program; (16) plans, prepares, and executes appropriate community involvement and health educational strategies/activities/programs for communities affected or potentially affected by toxic substances released into the environment; (17) develops and tests metrics that could be used for public health surveillance or evaluation of intervention effectiveness; and (18) partners with relevant internal and external stakeholders to incorporate prevention strategies into existing programs, policies, and practices.

IV. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Alex M. Azar II,

Secretary.

[FR Doc. 2020–00181 Filed 1–8–20; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5254]

Fresenius USA, Inc., et al.; Proposal To Withdraw Approval of 249 Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of 249 abbreviated new drug applications (ANDAs) from multiple holders of those ANDAs and is announcing an opportunity for the ANDA holders to request a hearing on this proposal. The basis for the proposal is that these ANDA holders have repeatedly failed to file required annual reports for those ANDAs.

DATES: The ANDA holders may submit a request for a hearing by February 10, 2020. Submit all data, information, and analyses upon which the request for a hearing relies by March 9, 2020. Submit electronic or written comments by March 9, 2020.

ADDRESSES: The request for a hearing may be submitted by the ANDA holders by either of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *https://www.regulations.gov,* including any attachments to the request for a hearing, will be posted to the docket unchanged.

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• Because your request for a hearing will be made public, you are solely responsible for ensuring that your request does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such

as a manufacturing process. The request for a hearing must include the Docket No. FDA–2019–N–5254 for ''Fresenius USA, Inc., et al.; Proposal To Withdraw Approval of 249 ANDAs; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

The ANDA holders may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

• Confidential Submissions—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of any decisions on this matter. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov* or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law.

Comments Submitted by Other Interested Parties: For all comments submitted by other interested parties, submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–5254 for ''Fresenius USA, Inc., et al.; Proposal To Withdraw Approval of 249 ANDAs; Opportunity for a Hearing.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–7920, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The holders of approved ANDAs to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved ANDAs under §§ 314.81 and 314.98 (21 CFR 314.81 and 314.98). The holders of the approved ANDAs listed in the following table have repeatedly failed to submit the required annual reports and have not responded to the Agency's request, sent by certified mail, for submission of the reports.

Application No.	Drug	Applicant
ANDA 020374	Inpersol-LC/LM With Dextrose 1.5% (calcium chloride, dextrose, magnesium chloride, sodium chloride, sodium lactate) Intraperitoneal Solution, 18.4 milligrams (mg)/100 milliliters (mL); 1.5 grams (g)/100 mL; 5.08 mg/100 mL; 538 mg/100 mL; 448 mg/100 mL.	Fresenius USA, Inc., 2637 Shadelands Dr., Walnut Creek, CA 94598.

Application No.	Drug	Applicant
	Inpersol-LC/LM With Dextrose 2.5% (calcium chloride, dextrose, magnesium chloride, sodium chloride, sodium lactate) Intraperitoneal Solution, 18.4 mg/100 mL; 2.5 g/100 mL; 5.08 mg/100 mL; 538 mg/100 mL; 448 mg/100 mL.	
	Inpersol-LC/LM With Dextrose 3.5% (calcium chloride, dextrose, magnesium chloride, sodium chloride, sodium lactate) Intraperitoneal Solution, 18.4 mg/100 mL; 3.5 g/100 mL; 5.08 mg/100 mL; 538 mg/100 mL; 448 mg/100 mL.	
	Inpersol-LC/LM With Dextrose 4.25% (calcium chloride, dextrose, magnesium chloride, sodium chloride, sodium lactate) Intraperitoneal Solution, 18.4 mg/100 mL; 4.25 g/100 mL; 5.08 mg/100 mL; 538 mg/100 mL; 448 mg/100 mL.	
ANDA 040057	Epinephrine and Lidocaine Hydrochloride (HCl) Injection, 0.01 mg/mL; 2% and 0.02 mg/mL; 2%.	Eastman Kodak Co., 343 State St., Rochester, NY 14650.
ANDA 040168	Hydrocortisone and Acetic Acid Otic Solution USP, 1%/2%	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc., 6451 West Main St., Morton Grove, IL 60053.
ANDA 040192	Prednisolone Syrup, 15 mg/5 mL	WE Pharmaceuticals, Inc., 1142 D St., P.O. Box 1142, Ramona, CA 92065.
ANDA 060074	Penicillin G Potassium for Injection, 20,000,000 units/vial	Pfizer Laboratories, Division of Pfizer, Inc., 235 East 42nd St., New York, NY 10017.
ANDA 060131	Tetracycline HCl Capsules	Leiner Health Products, Inc., 901 East 233rd St., Carson, CA 90745.
ANDA 060461	Neomycin Sulfate Ointment; Neomycin Sulfate and Hydrocortisone Acetate Ointment.	Ambix Laboratories, Division of Organics Corp. of America, 210 Orchard St., East Rutherford, NJ 07073.
ANDA 060521	Humatin (paromomycin sulfate) Capsules USP, Equivalent to (EQ) 250 mg base.	Parkedale Pharmaceuticals, Inc., 501 5th St., Bristol, TN 37620.
ANDA 060602	Penicillin G Potassium Powder	John D. Copanos and Co., Inc., 6110 Robinwood Rd., Baltimore, MD 21225.
ANDA 060627	Tribiotic (polymyxin B sulfate, bacitracin, and neomycin sulfate) Ointment, 5000 units/400 units/5 mg.	Ambix Laboratories, Division of Organics Corp. of America.
ANDA 060709	Oleandomycin Injection	Roerig, Division of Pfizer, Inc., 235 East 42nd St., New York, NY 10017.
ANDA 060724	Pyocidin-HC (neomycin sulfate, polymyxin B sulfate, and hydrocortisone) Otic Solution.	Kasco-EFCO Laboratories, Inc., Cantiague Rock Rd., Hicksville, NY 11802.
ANDA 060769	Tetracycline Syrup	West-Ward Pharmaceutical Corp., 465 Industrial Way West, Eatontown, NJ 07724.
ANDA 060773	Tetracycline Syrup	Leiner Health Products, Inc.
ANDA 060870	Oxytetracycline Injection	Proter S.p.A., c/o Richmar International, Inc., 1706 Birch Rd., McLean, VA 22101.
ANDA 061034	Lincomycin HCl Powder	Pharmacia and Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49001.
ANDA 061064	Nystatin Ointment	Lederle Laboratories, Division of American Cyanamid Co., 401 North Middletown Rd., Pearl River, NY 10965.
ANDA 061087	Benzocaine, Oxytetracycline HCl, and Polymyxin B Sulfate Otic Solution.	Pfizer Laboratories, Division of Pfizer, Inc.
ANDA 061154	Hydrocortisone Acetate and Neomycin Sulfate Ointment	Ambix Laboratories, Division of Organics Corp. of America.
ANDA 061209	Bacitracin Ointment USP, 500 units/g	Do.
ANDA 061228	Griseofulvin Capsules	Owen Laboratories, Division of Alcon Laboratories, 3737 Beltline Rd., Dallas, TX 75234.
ANDA 061483	Penicillin G Potassium Tablets	Leiner Health Products, Inc.
ANDA 061518	Bacitracin Zinc Ointment	Rexall Drug Co., 135 Chesterfield Industrial Blvd., Chesterfield, MO 63017.
ANDA 061519	Bacitracin Zinc and Neomycin Sulfate Ointment	Do.
ANDA 061520	Bacitracin Zinc and Neomycin Sulfate/Polymyxin B Sulfate Ointment.	Do.
ANDA 061521	Bacitracin Zinc, Benzocaine, and Neomycin Sulfate/Polymyxin B Sulfate Ointment.	Do.
ANDA 061528	Penicillin V Potassium Tablets USP, EQ 250 mg base and EQ 500 mg base.	American Antibiotics, Inc., 6110 Robinwood Rd., Baltimore, MD 21225.
ANDA 061529	Penicillin V Potassium for Oral Solution USP, EQ 125 mg base/5 mL and EQ 250 mg base/5 mL.	Do.
ANDA 061532	Ampicillin Trihydrate Capsules	Leiner Health Products, Inc.
ANDA 061601	Ampicillin for Oral Suspension USP, EQ 125 mg base/5 mL and EQ 250 mg base/5 mL.	American Antibiotics, Inc.
ANDA 061602	Ampicillin Capsules USP, EQ 250 mg base and EQ 500 mg base.	Do.
ANDA 061632	Ampicillin Trihydrate Capsules, 250 mg	Chromalloy Pharmaceuticals, Inc., 5353 Grosvenor Blvd., Los Angeles, CA 90066.
ANDA 061652	Oxytetracycline Capsules	Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
ANDA 061674	Penicillin V Potassium Tablets	Leiner Health Products, Inc.

Application No.	Drug	Applicant
ANDA 061697	Griseofulvin Capsules	Watson Laboratories, Inc., 311 Bonnie Cir., Corona, CA 92880.
ANDA 061699	Bacitracin Powder for Rx Compounding, 5,000,000 units/bottle.	Apothekernes Laboratorium A.S., c/o AL Laboratories, Inc., 1 Executive Dr., Fort Lee, NJ 07024.
ANDA 061701	Tetracycline Syrup, 125 mg/5 mL	AH Robins Co., 1211 Sherwood Ave., Richmond, VA 23220.
ANDA 061725	Cyclopar (tetracycline HCl) Capsules USP, 250 mg and 500 mg.	Warner-Lambert Co.
ANDA 061833	Oxytetracycline HCl Capsules, 250 mg	Pliva, c/o Transtrade USA, Ltd., 515 Madison Ave., 4th Floor East, New York, NY 10022.
ANDA 061847	Bleomycin Sulfate Injection	Takasaki Plant, Nippon Kayaku Co., Ltd., 500 5th Ave., Suite 1726, New York, NY 10110.
ANDA 061857	Penicillamine Powder	Chemiewerk Homberg, c/o Wallace Laboratories, Cranbury, NJ 08512.
ANDA 061903	Bacitracin Zinc and Polymyxin B Sulfate Ointment	Ambix Laboratories, Division of Organics Corp. of America.
ANDA 061943	Chloramphenicol Ophthalmic Solution, 0.5%	Lederle Laboratories, Division of American Cyanamid Co., 1 Cyanamid Plaza, Wayne, NJ 07470.
ANDA 062032	Erythromycin Stearate Tablets, EQ 250 mg base and EQ 500 mg base.	Warner-Lambert Co.
ANDA 062085	Tetracycline HCl Capsules, 250 mg	MM Mast and Co., 4152 Ruple Rd., Cleveland, OH 44121.
ANDA 062175	Tetracycline HCl Capsules, 250 mg	Warner-Lambert Co.
ANDA 062205	Cefaclor Capsules USP, EQ 250 mg base and EQ 500 mg base.	Ceph International Corp. c/o Mova Pharmaceutical Corp., State Rd #1 Jose Garrido St., Cagus, PR 00725.
ANDA 062215	Oxytetracycline HCl Capsules	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965–1215.
ANDA 062340	Gentamicin Sulfate Injection	Pharmaceutical Specialist Association, 9852 Cowden St., Philadelphia, PA 19115.
ANDA 062467	E-Solve 2 (erythromycin) Lotion, 2%	Syosset Laboratories, Inc., 150 Eileen Way, Syosset, NY 11791.
ANDA 062758	Eryzole (erythromycin ethylsuccinate and sulfisoxazole acetyl) Granules, EQ 200 mg base/5 mL; EQ 600 mg base/5 mL.	Alra Laboratories, Inc., 3850 Clearview Ct., Gurnee, IL 60031.
ANDA 062869	Cephalexin Capsules USP, EQ 500 mg base	Jerome Stevens Pharmaceuticals Inc., 60 DaVinci Dr., Bohemia, NY 11716.
ANDA 062870	Cephalexin Capsules USP, EQ 250 mg base	Do.
ANDA 062944	Clindamycin Phosphate Topical Solution USP, EQ 1% base	BOCA Pharmacal, LLC., 3550 North West 126th Ave., Coral Springs, FL 33065.
ANDA 070104	Chlorhexidine Gluconate Topical Solution, 4%	Matrix Medical Corp., 1825 South 3730 West, Salt Lake City, UT 84104.
ANDA 071054	Constilac (lactulose) Solution, 10 g/15 mL	Alra Laboratories, Inc.
ANDA 071057	Ibu-tab 200 (ibuprofen) Tablets, 200 mg	Do.
ANDA 071058	Ibu-tab (ibuprofen) Tablets, 400 mg	Do.
ANDA 071059	Ibu-tab (ibuprofen) Tablets, 600 mg	Do.
ANDA 071104	Leucovorin Calcium Tablets, EQ 15 mg base	Xanodyne Pharmacal, Inc., 7310 Turfway Rd., Suite 490, Florence, KY 41042.
ANDA 071139	Trazodone HCl Tablets, 50 mg	American Therapeutics, Inc., 89 Carlough Rd., Bohemia, NY 11716.
ANDA 071140	Trazodone HCl Tablets, 100 mg	Do.
ANDA 071331	Cholac (lactulose) Solution, 10 g/15 mL	Alra Laboratories, Inc.
ANDA 071362	Meclofenamate Sodium Capsules USP, 50 mg	American Therapeutics, Inc.
ANDA 071363	Meclofenamate Sodium Capsules USP, 100 mg	Do.
ANDA 071419	Brian Care (chlorhexidine gluconate) Topical Solution, 4%	Soapco, Inc., P.O. Box 5490, Pleasanton, CA 94566.
ANDA 071429	Clorazepate Dipotassium Capsules, 3.75 mg	American Therapeutics, Inc.
ANDA 071430	Clorazepate Dipotassium Capsules, 7.5 mg	Do.
ANDA 071431	Clorazepate Dipotassium Capsules, 15 mg	Do.
ANDA 071569	Danazol Capsules USP, 200 mg	Do.
ANDA 071787	Gen-Xene (clorazepate dipotassium) Tablets, 3.75 mg	Alra Laboratories, Inc.
ANDA 071788	Gen-Xene (clorazepate dipotassium) Tablets, 7.5 mg	Do.
ANDA 071789	Gen-Xene (clorazepate dipotassium) Tablets, 15 mg	Do.
ANDA 071955	Oxazepam Capsules USP, 10 mg	American Therapeutics, Inc.
ANDA 071956	Oxazepam Capsules USP, 15 mg	Do.
ANDA 071957	Oxazepam Capsules USP, 30 mg	Do.
ANDA 071962	Leucovorin Calcium Tablets, EQ 10 mg base	Xanodyne Pharmacal, Inc.
ANDA 071965	Ibu-tab (ibuprofen) Tablets, 800 mg	Alra Laboratories, Inc.
ANDA 072022	Triamterene and Hydrochlorothiazide Tablets, 75 mg/50 mg	American Therapeutics, Inc.
ANDA 072129	Maprotiline HCl Tablets USP, 25 mg	Do.
ANDA 072130	Maprotiline HCl Tablets USP, 50 mg	Do.
ANDA 072131	Maprotiline HCl Tablets USP, 75 mg	Do.
ANDA 072190	Metaproterenol Sulfate Inhalation Solution, 5%	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.
ANDA 072196	Milophene (clomiphene citrate) Tablets, 50 mg	Milex Products, Inc., 5915 Northwest Highway, Chicago, IL 60631.
ANDA 072255	Microderm (chlorhexidine gluconate) Topical Solution, 4%	Johnson and Johnson Medical, Inc., 2500 Arbrook Blvd., Arlington, TX 76014.

Application No.	Drug	Applicant
ANDA 072292	Prevacare R (chlorhexidine gluconate) Topical Solution, 0.5%.	Do.
ANDA 072295	Microderm (chlorhexidine gluconate) Topical Sponge, 4%	Do.
ANDA 072307	Fenoprofen Calcium Capsules USP, 200 mg	American Therapeutics, Inc.
ANDA 072308	Fenoprofen Calcium Capsules USP, 300 mg	Do.
ANDA 072309	Fenoprofen Calcium Tablets USP, 600 mg	Do.
ANDA 072782	Prazosin HCl Capsules USP, 1 mg	Do.
ANDA 072783	Prazosin HCl Capsules USP, 2 mg	Do.
ANDA 072784	Prazosin HCl Capsules USP, 5 mg	Do.
ANDA 073416	E–Z Scrub (chlorhexidine gluconate) Topical Sponge, 4%	Becton Dickinson Surgical System, 9450 South State St., Sandy, UT 84070.
ANDA 073535	Piroxicam Capsules, 10 mg	Mutual Pharmaceutical Co., Inc., 1100 Orthodox St., Philadelphia, PA 19124.
ANDA 074523	Metromidol (metronidazole) Tablets, 250 mg and 500 mg	Laboratorios Applicaciones Farmaceuticas S.A. de CV, c/o Richard Hamer Association, Inc., P.O. Box 16598, Fort Worth, TX 76162.
ANDA 074560	Flurbiprofen Tablets USP, 100 mg	Theragen, Inc., 10 Lake Dr., East Windsor, NJ 08520.
ANDA 074702	Metaproterenol Sulfate Syrup, 10 mg/5 mL	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.
ANDA 074881	Iopamidol Injection, 41%, 51%, 61%, and 76%	Cook Imaging Corp., 927 South Curry Pike, P.O. Box 3068, Bloomington, IN 47403.
ANDA 074988	Aspirin, Caffeine, and Orphenadrine Citrate Tablets, 385 mg/30 mg/25 mg and 770 mg/60 mg/50 mg.	Jerome Stevens Pharmaceuticals, Inc.
ANDA 075181	Prednisolone Sodium Phosphate Oral Solution, EQ 5 mg base/5 mL.	WE Pharmaceuticals, Inc.
ANDA 075260	Tretinoin Topical Solution, 0.05%	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.
ANDA 075414	Nifedipine Extended-Release Tablets, 90 mg	Martec USA, LLC, 1800 North Topping Ave., Kansas City, MO 64120.
ANDA 075507	Ipratropium Bromide Inhalation Solution, 0.02%	Pharmascience, Inc., 10 Orchard Pl., Tenafly City, NJ 07670.
ANDA 075569	Thallous Chloride TL 201 Injection USP, 1 millicurie (mCi)/mL.	Trace Life Sciences, Inc., 2101 Shady Oaks, Denton, TX 76205.
ANDA 075586	Metaproterenol Sulfate Inhalation Solution, 0.4% and 0.6%	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.
ANDA 075619	Minoxidil Extra Strength (for Men) Topical Solution, 5%	Avacor Products, LLC, 227 East 56th St., 3rd Floor, New York, NY 10022.
ANDA 075766	Calcitriol Injection, 1 microgram (mcg)/mL and 2 mcg/mL	Fresenius Medical Care North America, 95 Hayden Ave., Lexington, MA 02421.
ANDA 075941	Strontium Chloride SR–89 Injection, 1 mCi/mL	Bio-Nucleonics, Inc., 1600 Market St., Suite 13200, Philadelphia, PA 19103.
ANDA 077072	Ipratropium Bromide Inhalation Solution, 0.02%	Landela Pharmaceutical, 776 East Riverside Dr., Suite 150, Eagle, ID 83616.
ANDA 077218	ThyroShield (potassium iodide) Oral Solution USP, 65 mg/mL.	Arco Pharmaceuticals, LLC, 7605 Maryland Ave., St. Louis, MO 63105.
ANDA 077569	Albuterol Sulfate Inhalation Solution, EQ 0.083% base	Landela Pharmaceutical.
ANDA 080024	Sulfacel-15 (sulfacetamide sodium) Ophthalmic Solution, 15%.	Optopics Laboratories Corp., P.O. Box 210, Fairton, NJ 08320.
ANDA 080036	Sosol (sulfisoxazole) Tablets, 500 mg	MK Laboratories, Inc., 424 Grasmere Ave., Fairfield, CT 06430.
ANDA 080366	Soxazole (sulfisoxazole) Tablets, 500 mg	Alra Laboratories, Inc.
ANDA 080380	Bamate (meprobamate) Tablets, 200 mg and 400 mg	Do.
ANDA 080483	Hi-cor (hydrocortisone) Cream, 2.5%	C and M Pharmacal, Inc., 1519 East 8 Mile Rd., Hazel Park, MI 48030.
ANDA 080492	Reserpine Tablets, 0.1 mg and 0.25 mg	Marshall Pharmacal Corp., 89 Michael St., South Hackensack, NJ 07606.
ANDA 080518	Dimenhydrinate Tablets, 50 mg	Alra Laboratories, Inc.
ANDA 080519	Diphenhydramine HCl Capsules, 25 mg and 50 mg	Do.
ANDA 080525	Reserpine Tablets, 0.1 mg and 0.25 mg	MK Laboratories, Inc.
ANDA 080592	Diphenhydramine HCl Capsules, 50 mg	Valeant Pharmaceuticals International, One Enterprise, Aliso Viejo, CA 92656.
ANDA 080660	Ocusulf (sulfacetamide sodium) Ophthalmic Solution, 10% and 30%.	Miza Pharmaceuticals USA, Inc., c/o Optopics Laboratories, 40 Main St., P.O. Box 210, Fairton, NJ 08320.
ANDA 080714	Diphenhydramine HCl Oral Solution, 12.5 mg/5 mL	Alra Laboratories, Inc.
ANDA 080715	Dimenhydrinate Oral Solution, 12.5 mg/4 mL	Do.
ANDA 080941	Isoniazid Tablets, 100 mg	MK Laboratories, Inc.
ANDA 080970	Methscopolamine Bromide Tablets, 2.5 mg	Private Formulations, Inc., 460 Plainfield Ave., Edison, NJ 08818.
ANDA 081145	Aspirin and Methocarbamol Tablets, 325 mg/400 mg	Jerome Stevens Pharmaceuticals, Inc.
ANDA 083001	Triamcinolone Acetonide Aerosol Foam Emulsion	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965–1215.
ANDA 083087	Diphenhydramine HCl Capsules, 25 mg and 50 mg	MK Laboratories, Inc.
ANDA 083088	Diphenhydramine HCl Elixir, 12.5 mg/5 mL	Do.
ANDA 083264	Pentobarbital Sodium Capsules, 100 mg	Valeant Pharmaceuticals International.

Application No.	Drug	Applicant
ANDA 083286	Chlorpheniramine Maleate Tablets	Marshall Pharmacal Corp.
ANDA 083315	Procaine HCl Injection, 1% and 2%	Elkins Sinn Pharmaceutical Co., c/o ESI Lederle, 2 Esterbrook Ln., Cherry Hill, NJ 08003.
ANDA 083320	Acetazolamide Tablets, 250 mg	Alra Laboratories, Inc.
ANDA 083389	Epinephrine and Lidocaine HCl Injection, 0.01 mg/mL and 1%.	Dell Laboratories, Inc., 668 Front St., Teaneck, NJ 07666.
ANDA 083390	Epinephrine and Lidocaine HCl Injection, 0.01 mg/mL and 2%.	Do.
ANDA 083457	Vitamin A Palmitate Capsules, EQ 25,000 units base and EQ 50,000 units base.	MK Laboratories, Inc.
ANDA 083524	Butabarbital Sodium Tablets, 16.2 mg	Marshall Pharmacal Corp.
ANDA 083525	Niacin Tablets, 500 mg	MK Laboratories, Inc.
ANDA 083526	Folic Acid Tablets, 1 mg	Do.
ANDA 083658	Promethazine HCl Tablets, 25 mg	Private Formulations, Inc.
ANDA 083806	Dexamethasone Tablets, 0.75 mg	Phoenix Laboratories, Inc., 175 Lauman Ln., East Hicksville, NY 11801.
ANDA 083827	Pramine (imipramine HCl) Tablets, 10 mg, 25 mg, and 50 mg.	Alra Laboratories, Inc.
ANDA 083858	Butabarbital Sodium Tablets, 32.4 mg	Marshall Pharmacal Corp.
ANDA 083863	Sulfisoxazole Cream	Holland Rantos Co., Inc., P.O. Box 385, Piscataway, NJ 08854.
ANDA 084185	Bethanechol Chloride Tablets, 10 mg	Wendt Laboratories, Inc., 200 West Beaver, P.O. Box 128, Belle Plaine, MN 56011.
ANDA 084186	Bethanechol Chloride Tablets, 25 mg	Do.
ANDA 084188	Myotonachol (bethanechol chloride) Tablets, 5 mg, 10 mg, and 25 mg.	Glenwood, Inc., 83 North Summit St., P.O. Box 518, Tenafly, NJ 07670.
ANDA 084246	Cortisone Acetate Tablets, 25 mg	Everylife, 2021 15th Ave., West Seattle, WA 98119.
ANDA 084439	Prednisolone Tablets, 1 mg, 2.5 mg, and 5 mg	Do.
ANDA 084440	Prednisone Tablets, 1 mg, 2.5 mg, and 5 mg	Do.
ANDA 084494	Hydrochlorothiazide Tablets	West-Ward Pharmaceutical Corp.
ANDA 084590	Pentobarbital Sodium Capsules, 100 mg	Anabolic, Inc., 1835 East Cheyenne Rd., Colorado Springs, CO 80905.
ANDA 084631	Quinidine Sulfate Tablets USP, 200 mg	Sandoz, Inc., 4700 Eon Dr., Wilson, NC 27893.
ANDA 084687	Niacin Tablets, 500 mg	Zzeon Pharmaceuticals, Ltd., Jamboree at Kevin, Irvine, CA 92705,
ANDA 084714	Hydro-Reserp (hydrochlorothiazide and reserpine) Tablets, 50 mg/0.125 mg.	ABC Holding Corp., P.O. Box 307, 70945 Van Dyke Ave., Romeo, MI 48065.
ANDA 084729	Lidocaton (epinephrine and lidocaine HCl) Injection, 0.01 mg/mL and 2%.	Pharmaton, Ltd., c/o Bass Ullmna and Lustigman, 747 3rd Ave., New York, NY 10017.
ANDA 084803	Chlorpromazine HCl Tablets, 10 mg	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965–1215.
ANDA 084872	Meclizine HCl Tablets, 25 mg	CM Bundy Co., 2055 Reading Rd., Cincinnati, OH 45205.
ANDA 084902	Promethacon (promethazine HCl) Suppository, 50 mg	Polymedica Industries, Inc., 2 Constitution Way, Woburn, MA 01801.
ANDA 084931	Methamphetamine HCl Tablets, 5 mg and 10 mg	Rexar Pharmacal, 396 Rockaway Ave., Valley Stream, NY 11581.
ANDA 084933	Diethylstilbestrol Tablets, 1 mg	West-Ward Pharmaceutical Corp.
ANDA 084977	Halothane Inhalation, 99.99%	BH Chemicals, Inc., 500 5th Ave., New York, NY 10036.
ANDA 085009	Lygen (chlordiazepoxide HCl) Capsules, 10 mg	Alra Laboratories, Inc.
ANDA 085039	Folic Acid Tablets USP, 1 mg	Wendt Laboratories, Inc.
ANDA 085040	Isoniazid Tablets USP, 100 mg	Do.
ANDA 085041	Meclizine HCl Tablets, 25 mg	Do.
ANDA 085042	Methocarbamol Tablets USP, 500 mg	Do.
ANDA 085044	Reserpine Tablets USP, 0.25 mg	Do.
ANDA 085075	Aerolate III (theophylline) Extended-Release Capsules, 65 mg. Aerolate JR (theophylline) Extended-Release Capsules, 130 mg.. Aerolate SR (theophylline) Extended-Release Capsules, 260 mg..	Fleming and Co. Pharmaceuticals, Inc., 1600 Fenton Park Dr., Fenton, MO 63026.
ANDA 085107	Lygen (chlordiazepoxide HCl) Capsules, 5 mg	Alra Laboratories, Inc.
ANDA 085108	Lygen (chlordiazepoxide HCl) Capsules, 25 mg	Do.
ANDA 085125	Methyltestosterone Sublingual Tablets, 10 mg	Tablicaps, Inc., P.O. Box 5555, Franklinville, NJ 08322.
ANDA 085217	Acetaminophen and Codeine Phosphate Tablets, 325 mg/30 mg.	Everylife.
ANDA 085235	Chlordiazepoxide HCl Capsules	Abbott Laboratories, Pharmaceutical Products Division, 100 Abbott Park Rd., Abbott Park, IL 60064.
ANDA 085236	Chlordiazepoxide HCl Capsules	Do.
ANDA 085252	Meclizine HCl Tablets, 25 mg	ABC Holding Corp.
ANDA 085253	Meclizine HCl Tablets, 12.5 mg	Do.
ANDA 085282	Hydrocortisone Lotion, 0.5% and 1%	Mericon Industries, Inc., 8819 North Pioneer Rd., Peoria, IL 61615.
ANDA 085383	Butabarbital Sodium Elixir, 30 mg/5 mL	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.

Application No.	Drug	Applicant
ANDA 085411	Phentermine HCl Capsules, 30 mg	ABC Holding Corp.
ANDA 085511	Cam-Metrazine (phendimetrazine tartrate) Tablets, 35 mg	Do.
ANDA 085512	Phenazine-35 (phendimetrazine tartrate) Tablets, 35 mg	Do.
ANDA 085550	Butabarbital Sodium Tablets, 30 mg	CM Bundy Co.
ANDA 085569	Chlorothiazide Tablets, 250 mg	ABC Holding Corp.
ANDA 085587	Meclizine Hydrochloride Chewable Tablets	Camall Co., Inc., 60950 Van Dyke Ave., P.O. Box 218, Washington, MI 48094.
ANDA 085638	Codeine, Aspirin, APAP Formula No. 4 (codeine phosphate, aspirin, and acetaminophen) Capsules, 60 mg/180 mg/150 mg.	Scherer Laboratories, Inc., 2301 Ohio Dr., Suite 234, Plano, TX 75093.
ANDA 085639	Codeine, Aspirin, APAP Formula No. 3 (codeine phosphate, aspirin, and acetaminophen) Capsules, 30 mg/180 mg/150 mg.	Do.
ANDA 085640	Codeine, Aspirin, APAP Formula No. 2 (codeine phosphate, aspirin, and acetaminophen) Capsules, 15 mg/180 mg/150 mg.	Do.
ANDA 085672	Hydrochlorothiazide Tablets, 50 mg	ABC Holding Corp.
ANDA 085756	Cam-Metrazine (phendimetrazine tartrate) Tablets, 35 mg	Camall Co., Inc.
ANDA 085766	Atropine Sulfate and Diphenoxylate HCl Tablets, 0.025 mg/2.5 mg.	Private Formulations, Inc.
ANDA 085882	Duvoid (bethanechol chloride) Tablets, 50 mg	Chartwell RX Sciences, LLC, 77 Brenner Dr., Congers, NY 10920.
ANDA 085888	Brompheniramine Maleate Tablets	Leiner Health Products, Inc.
ANDA 085891	Meclizine HCl Tablets, 25 mg	Anabolic, Inc.
ANDA 085895	Secobarbital Sodium Capsules, 100 mg	Everylife.
ANDA 086008	Hydrocortisone and Urea Cream, 1%/10%	Bioglan Laboratories, Ltd., 450 Hilltop Rd., Riegelsville, PA 18077.
ANDA 086077	Nitrofurazone Ointment, 0.2%	Ambix Laboratories, Division of Organics Corp. of America.
ANDA 086079	Hydrocortisone Ointment, 1%	Do.
ANDA 086080	Hydrocortisone Cream, 1%	Do.
ANDA 086141	Tolbutamide Tablets, 500 mg	Alra Laboratories, Inc.
ANDA 086260	Ona-Mast (phentermine HCl) Tablets, 8 mg	MM Mast and Co.
ANDA 086262	Duvoid (bethanechol chloride) Tablets, 10 mg	Chartwell RX Sciences, LLC.
ANDA 086263	Duvoid (bethanechol chloride) Tablets, 25 mg	Do.
ANDA 086271	Hydrocortisone Cream, 2.5%	Ambix Laboratories, Division of Organics Corp. of America.
ANDA 086272	Hydrocortisone Ointment, 2.5%	Do.
ANDA 086498	Amitriptyline HCl Tablets, 10 mg	Alra Laboratories, Inc.
ANDA 086499	Amitriptyline HCl Tablets, 50 mg	Do.
ANDA 086500	Amitriptyline HCl Tablets, 150 mg	Do.
ANDA 086501	Amitriptyline HCl Tablets, 100 mg	Do.
ANDA 086502	Amitriptyline HCl Tablets, 25 mg	Do.
ANDA 086503	Amitriptyline HCl Tablets, 75 mg	Do.
ANDA 086511	Ona-Mast (phentermine HCl) Capsules, 30 mg	MM Mast and Co.
ANDA 086516	Ona-Mast (phentermine HCl) Capsules, 30 mg	Do.
ANDA 086550	X-Trozine (phendimetrazine tartrate) Tablets, 35 mg	Shire Richwood, Inc., 7900 Tanners Gate Dr., Suite 200, Florence, KY 41042.
ANDA 086551	X-Trozine (phendimetrazine tartrate) Tablets, 35 mg	Do.
ANDA 086552	X-Trozine (phendimetrazine tartrate) Tablets, 35 mg	Do.
ANDA 086553	X-Trozine (phendimetrazine tartrate) Tablets, 35 mg	Do.
ANDA 086554	X-Trozine (phendimetrazine tartrate) Tablets, 35 mg	Do.
ANDA 086735	Phentermine HCl Capsules, 15 mg	Camall Co., Inc.
ANDA 086748	Theophylline Elixir, 80 mg/15 mL	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.
ANDA 086766	Nitrofurazone Ointment, 0.2%	Wendt Laboratories, Inc.
ANDA 087081	Nitrofurazone Topical Solution, 0.2%	Do.
ANDA 087226	Phentermine HCl Capsules, 30 mg	Camall Co., Inc.
ANDA 087371	X-Trozine L.A. (phendimetrazine tartrate) Extended-Release Capsules, 105 mg.	Shire Richwood, Inc.
ANDA 087392	Aminophylline Injection, 25 mg/mL	Pharma Serve, Inc., Subsidiary of Torigian Laboratories, 218–20 98th Ave., Queens Village, NY 11429.
ANDA 087394	X-Trozine (phendimetrazine tartrate) Capsules, 35 mg	Shire Richwood, Inc.
ANDA 087442	Neosar (cyclophosphamide) for Injection, 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial.	Bedford Laboratories, Division of Ben Venue Laboratories, Inc., 300 Northfield Rd., Bedford, OH 44146.
ANDA 087487	Melfiat-105 (phendimetrazine tartrate) Extended-Release Capsules, 105 mg.	Numark Laboratories, Inc., 75 Mayfield Ave., Edison, NJ 08837.
ANDA 087636	Tropicamide Ophthalmic Solution, 0.5%	Miza Pharmaceuticals USA, Inc., c/o Optopics Laboratories.
ANDA 087637	Tropicamide Ophthalmic Solution, 1%	Do.
ANDA 087681	Paracaine (proparacaine HCl) Ophthalmic Solution, 0.5%	Optopics Laboratories Corp.
ANDA 087764	Oby-Trim (phentermine HCl) Capsules, 30 mg	Shire Richwood, Inc.
ANDA 087932	Triamcinolone Acetonide Cream, 0.025%	Ambix Laboratories, Division of Organics Corp. of America.
ANDA 088786	Sodium Polystyrene Sulfonate USP Powder, 453.6 g/bottle	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.

Application No.	Drug	Applicant
ANDA 088897	Promethazine VC Plain (phenylephrine HCl and promethazine HCl) Syrup, 5 mg/5 mL and 6.25 mg/5 mL.	Do.
ANDA 089141	Aerolate (theophylline) Oral Solution, 150 mg/15 mL	Fleming and Co. Pharmaceuticals, Inc.
ANDA 089417	Methocarbamol Tablets USP, 500 mg	American Therapeutics, Inc.
ANDA 089418	Methocarbamol Tablets USP, 750 mg	Do.
ANDA 089478	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/15 mg.	Do.
ANDA 089479	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg.	Do.
ANDA 089480	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/60 mg.	Do.
ANDA 089514	Trihexyphenidyl HCl Elixir, 2 mg/5 mL	Pharmaceutical Ventures, Ltd., P.O. Box D3700, Pomona, NY 10970.
ANDA 089726	Prednisone Oral Solution, 5 mg/5 mL	Wockhardt EU Operations (Swiss) AG, c/o Morton Grove Pharmaceuticals, Inc.
ANDA 204472	Fludeoxyglucose F–18 Injection USP, 20–300 mCi/mL	MIPS Cyclotron and Radiochemistry Facility, 1201 Welch Rd., Rm. PS049, Stanford, CA 94305.
ANDA 204517	Sodium Fluoride F–18 Injection, 10–200 mCi/mL	Do.
ANDA 204535	Ammonia N–13 Injection USP, 3.75–37.5 mCi/mL	Do.

Therefore, under §§ 314.150(b)(1) and 314.200 (21 CFR 314.150(b)(1) and 314.200), notice is given to the holders of the approved ANDAs listed in the table and to all other interested persons that the Director of CDER proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)) withdrawing approval of the ANDAs and all amendments and supplements to them on the grounds that the ANDA holders have failed to submit reports required under §§ 314.81 and 314.98.

In accordance with section 505 of the FD&C Act and part 314 (21 CFR part 314), the ANDA holders are hereby provided an opportunity for a hearing to show why the applications listed previously should not be withdrawn and an opportunity to raise, for an administrative determination, all issues relating to the legal status of the drug products covered by these ANDAs.

An ANDA holder who decides to seek a hearing must file the following: (1) A written notice of participation and request for a hearing (see **DATES** and **ADDRESSES**) and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing (see **DATES** and **ADDRESSES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, the notice of participation and request for a hearing; the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an ANDA holder to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that ANDA holder not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the ANDAs and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the ANDAs, and the drug products may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved ANDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

This notice is issued under section 505(e) of the FD&C Act and under authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

Dated: January 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00120 Filed 1–8–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0797]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 10, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0302. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Human Tissue Intended for Transplantation—21 CFR Part 1270

OMB Control Number 0910–0302—Extension

Under section 361 of the Public Health Services Act (42 U.S.C. 264), FDA issued regulations under part 1270 (21 CFR part 1270) to prevent the transmission of human immunodeficiency virus, hepatitis B, and hepatitis C, through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) (21 CFR 1270.31(a) through (d)) requires written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process under § 1270.21 (21 CFR 1270.21); (2) all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as prescribed in § 1270.21; (3) designating and identifying quarantined tissue; and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Section 1270.31(a) and (b) also requires recording and justification of any deviation from the written procedures. Section 1270.33(a) (21 CFR 1270.33(a)) requires records to be maintained concurrently with the performance of each significant step required in the performance of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and of the records required under § 1270.21. Section 1270.33(h) requires all records to be retained for at least 10 years beyond the date of transplantation, if known, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35(a) through (d) (21 CFR 1270.35(a) through (d)) requires specific records to be maintained to document the following: (1) The results and interpretation of all required infectious disease tests; (2) information on the identity and relevant medical records of the donor; (3) the receipt and/or distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, we estimate 383 tissue establishments, of which 262 are conventional tissue banks and 121 are eye tissue banks. Based on information provided by industry, we estimate a total of 2,141,960 conventional tissue products, and 130,987 eye tissue products distributed per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, we estimate 29,799 deceased donors of conventional tissue and 70,027 deceased donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirements in part 1270. Based on information included in CBER's database system, 90 percent of the conventional tissue banks are members of AATB (262 × 90 percent = 236), and 95 percent of eye tissue banks are members of EBAA (121 × 95 percent = 115). Therefore, we exclude burden for recordkeeping by these 351 establishments (236 + 115 = 351) from our estimate as we believe such recordkeeping is usual and customary business activity (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 32 establishments, which is 8.36 percent of all establishments (383 − 351 = 32, or 32/383 = 8.36 percent).

We assume that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, our estimated burden includes the general review and update of written procedures (an annual average of 24 hours), and the recording and justifying of any deviations from the written procedures under § 1270.31(a) and (b) (an annual average of 1 hour). The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h) include documenting the results and interpretation of all required infectious disease tests and results and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and our experience with the information collection.

In the **Federal Register** of September 24, 2019 (84 FR 50039), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part 1270; human tissue intended for transplantation	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Subpart C—Procedures and Records					
1270.31(a) through (d) [2]	32	1	32	24	768
1270.31(a) and (b) [3]	32	2	64	1	64
1270.33(a), (f), and (h), and 1270.35(a) and (b)	32	6,198.84	198,363	1	198,363
1270.35(c)	32	11,876.12	380,036	1	380,036
1270.35(d)	32	1,484.50	47,504	1	47,504

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR part 1270; human tissue intended for transplantation	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Total					626,735

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of standard operating procedures (SOPs).
[3] Documentation of deviations from SOPs.

Based on a review of the information collection since our last OMB approval, we have made no adjustments to our burden estimate.

Dated: January 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00144 Filed 1–8–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6085]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Administrative Practice and Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with our General Administrative Practice and Procedures regulations.

DATES: Submit either electronic or written comments on the collection of information by March 9, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–6085 for ''General Administrative Practice and Procedures.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Administrative Practice and Procedures

OMB Control Number 0910–0191—Revision

This information collection supports FDA regulations governing its administrative practices and procedures. Although certain information collection pertaining to official administrative actions is not subject to review by OMB under the PRA in accordance with 44 U.S.C. 3518(c)(1)(B) (5 CFR 1320.4(a)(2)), we have reviewed our regulations and are revising this information collection to include provisions that we believe may be subject to OMB review. We are also revising the information collection to consolidate related activities discussed in Agency guidance, as we believe this will improve the efficiency of our operations.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.19; request for waiver, suspension, or modification of requirements	1	1	1	1	1
10.30 and 10.31; citizen petitions and petitions related to ANDA,[2] certain NDAs,[3] or certain BLAs [4]	220	1	220	24	5,280
10.33; administrative reconsideration of action	6	1	6	10	60
10.35; administrative stay of action	6	1	5	10	50
10.65; meetings and correspondence	750	1	750	5	3,750
10.85; requests for Advisory opinions	4	1	4	16	64
10.115(f)(3); submitting draft guidance proposals	100	1	100	4	400
12.22—Filing objections and requests for a hearing on a regulation or order	5	1	5	20	100
12.45—Notice of participation	5	1	5	3	15
Total			1,096		9,720

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Abbreviated New Drug Applications.
[3] New Drug Applications.
[4] Biologic License Applications.

Unless a waiver, suspension, or modification submitted under § 10.19 (21 CFR 10.19) is granted by the Commissioner of Food and Drugs (the Commissioner), the regulations in 21 CFR part 10 apply to all petitions, hearings, and other administrative proceedings and activities conducted by FDA. Because we have not received requests under § 10.19, we had not included this provision in the information collection. However, to reflect the attendant burden resulting from submitting such a request, we provide an estimate of 1 response and 1 burden hour annually.

Administrative proceedings may be initiated under § 10.25 when a petition is submitted. Section 10.30 sets forth procedures by which an interested person may submit a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. Similarly, section 10.31 governs citizen petitions and petitions for stay of action related to abbreviated new drug applications, certain new drug applications, or certain biologics license applications issued under section 701(a) of the Federal, Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(a)). The regulations provide content, format, and procedural requirements applicable to the submission of these petitions. To assist respondents to the information collection, FDA's Center for Drug Evaluation and Research developed an interpretive guidance entitled, ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' The guidance describes FDA's current thinking on interpreting section 505(q) of the FD&C Act (21 U.S.C. 355(q)), and is currently approved under OMB control number 0910–0679. Based on Agency data, an average of 220 citizen petitions are received annually under §§ 10.30 and 10.31, and we estimate an average of 24 hours is required to

prepare such a petition, for a total of 5,280 hours annually.

The regulations also establish a means by which an interested person may request that part or all of a decision by the Commissioner be reconsidered, or that the effective date of an action be stayed or extended. Sections 10.33 and 10.35 establish the content, format, and procedural requirements applicable to such requests and explain that they must be submitted no later than 30 days after the decision involved. The regulations provide alternatively that, for good cause, the Commissioner may permit a petition to be filed after 30 days. The regulations also explain that an interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. According to our records, we have received a total of 12 such requests and we assume it takes respondents an average of 10 hours to prepare.

Section 10.65 covers Agency meetings and correspondence. Interested persons may hold meetings and exchange correspondence with FDA representatives on matters within its jurisdiction by following the instructions and providing the information described in § 10.65. Because FDA maintains other information collections in its inventory that cover specific types of meeting requests, we did not previously include burden that may result from this section. However, to account for burden associated with meeting requests and correspondence generally, we provide an estimate of 2,000 submissions annually under this information collection; we assume one respondent per submission; and we assume each submission requires respondents anywhere between 1 to 10 hours to prepare, including gathering and reviewing the necessary material. We therefore use an average of 5 hours for this estimate and base this estimate on our experience with similar information collection.

Section 10.85, issued under section 701(a) of the FD&C Act, sets forth content, format, and procedural requirements by which an interested person may request an advisory opinion from the Commissioner on a matter of general applicability. The regulation explains that, when making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and a full statement of the facts and legal points relevant to the request. Based on Agency data, we estimate 4 such requests are received each year and we assume each request requires 16 hours to prepare, for a total of 64 hours annually.

Section 10.115(f)(3) provides for the public submission of draft guidance documents or topics for development to our Dockets Management Staff. To participate in the development and issuance of guidance documents, the public may elect to submit comment through alternative mechanisms as explained in our Good Guidance Practice regulations under § 10.115. Although most submissions and attendant burden associated with recommendations found in Agency guidance is accounted for in individual information collections associated with a particular product area or regulatory topic, here we are accounting for burden associated with general public submissions as described in § 10.115(f)(3). Based on Agency data, we receive an average of 100 such submissions each year; we assume each submission requires an average of 4 hours to prepare; and therefore calculate a total burden of 400 hours annually.

Regulations in 21 CFR 12.20 (§ 12.20) include information collection associated with requesting a formal evidentiary public hearing, and are issued under section 701(e)(2) of the FD&C Act. The regulations provide instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and does not limit the evidence that may be presented if a hearing is granted. We estimate 5 respondents will file a request under the regulation and assume each request requires 20 hours to prepare, for a total of 100 hours annually.

Finally, section 12.45 (21 CFR 12.45), issued under section 701 of the FD&C Act, sets forth content, format, and procedural requirements for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, concerning disclosure of data and information by participants (21 CFR 13.25). In accordance with § 12.45(e) the presiding officer may omit a participant's appearance. Based on our records, we estimate 5 filings under this regulation and assume it requires 3 hours to prepare, for a total of 15 hours annually.

Respondents to the information collection are those interested persons conducting business with the FDA, and thus subject to the applicable administrative regulations.

The burden estimates for this collection of information are based on Agency records and our experience over the past 3 years. By revising the information collection to include additional provisions, we have increased our annual burden estimate by 869 responses and 1,096 hours.

Dated: January 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00151 Filed 1–8–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the the Substance Abuse and Mental Health Services Administration's National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given of the meeting on January 28, 2020, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (SAMHSA NAC). The meeting is open to the public and can also be accessed remotely. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meeting will include remarks and dialogue from the Assistant Secretary for Mental Health and Substance Use; updates from the

SAMHSA Centers Directors, and a council discussion on clinical trends and emerging national issues with SAMHSA NAC members.

DATES: January 28, 2020, 9:00 a.m. to approximately 4:00 p.m. (ET)/Open.

ADDRESSES: The meeting will be held at SAMHSA Headquarters, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Carlos Castillo, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–2787, Email: *carlos.castillo@samhsa.hhs.gov*.

SUPPLEMENTARY INFORMATION: The SAMHSA NAC was established to advise the Secretary, Department of Health and Human Services (HHS), and the Assistant Secretary for Mental Health and Substance Use, SAMHSA, to improve the provision of treatments and related services to individuals with respect to substance use and to improve prevention services, promote mental health, and protect legal rights of individuals with mental illness and individuals who are substance users.

Interested persons may present data, information, or views orally or in writing, on issues pending before the Council. Written submissions must be forwarded to the contact person by January 21, 2020. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person by January 21, 2020. Up to 3 minutes will be allotted for each presentation, and as time permits.

To obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, CAPT Carlos Castillo.

Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council's website at *http://www.samhsa.gov/about-us/advisory-councils/* or by contacting Carlos Castillo.

Council Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Dated: January 6, 2020.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2020–00171 Filed 1–8–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2001]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 8, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2001, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide

recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Manistee County, Michigan (All Jurisdictions) **Project: 14–05–3368S Preliminary Date: June 10, 2019**	
Charter Township of Filer	Filer Charter Township Hall, 2505 Filer City Road, Manistee, MI 49660.
City of Manistee	Manistee County Planning Department, 415 Third Street, Manistee, MI 49660.
Township of Arcadia	Township Hall, 3422 Lake Street, Arcadia, MI 49613.
Township of Brown	Brown Township Hall, 9763 Coates Highway, Manistee, MI 49660.
Township of Manistee	Township Hall, 410 Holden Street, Manistee, MI 49660.
Township of Onekama	Township Offices, 5435 Main Street, Onekama, MI 49675.
Township of Pleasanton	Pleasanton Township Hall, 8958 Lumley Road, Bear Lake, MI 49614.
Township of Stronach	Stronach Township Hall, 2471 Main Street, RR3, Manistee, MI 49660.
Village of Eastlake	Village Hall, 175 South Main Street, Eastlake, MI 49626.
Village of Onekama	Village Offices, 5283 Main Street, Onekama, MI 49675.

[FR Doc. 2020–00184 Filed 1–8–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to

adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
California:						
Los Angeles ...	City of Santa Clarita (19–09–0909P).	The Honorable Marsha McLean, Mayor, City of Santa Clarita, City Hall, 23920 Valencia Boulevard, Suite 300, Santa Clarita, CA 91355.	City Hall Planning Department, 23920 Valencia Boulevard, Suite 300, Santa Clarita, CA 91355.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	060729
Nevada	Unincorporated Areas of Nevada County (19–09–0859P).	The Honorable Richard Anderson, Chairman, Board of Supervisors, Nevada County, 950 Maidu Avenue, Nevada City, CA 95959.	Nevada County Eric W. Rood Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	060210
Riverside	City of Lake Elsinore (19–09–1886P).	The Honorable Steve Manos, Mayor, City of Lake Elsinore, City Hall, 130 South Main Street, Lake Elsinore, CA 92530.	Engineering Department, 130 South Main Street, Lake Elsinore, CA 92530.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 7, 2020	060636
Riverside	Unincorporated Areas of Riverside County (19–09–1886P).	The Honorable Kevin Jeffries, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 7, 2020	060245
Sacramento	City of Elk Grove (19–09–0908P).	The Honorable Steve Ly, Mayor, City of Elk Grove, City Hall, 8401 Laguna Palms Way, Elk Grove, CA 95758.	Public Works Department, 8401 Laguna Palms Way, Elk Grove, CA 95758.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	060767
Sacramento	Unincorporated Areas of Sacramento County (18–09–1752P).	The Honorable Patrick Kennedy, Chairman, Board of Supervisors, Sacramento County, 700 H Street, Suite 2450, Sacramento, CA 95814.	Sacramento County Department of Water Resources, 827 7th Street, Suite 301, Sacramento, CA 95814.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2020	060262
San Diego	City of National City (19–09–0359P).	The Honorable Alejandra Sotelo-Solis, Mayor, City of National City, 1243 National City Boulevard, National City, CA 91950.	City Hall, 1243 National City Boulevard, National City, CA 91950.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	060293
Florida:						
St. Johns	Unincorporated Areas of St. Johns County (19–04–4728P).	The Honorable Jeb S. Smith, Chair, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2020	125147
St. Johns	Unincorporated Areas of St. Johns County (19–04–4958P).	The Honorable Jeb S. Smith, Chair, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 7, 2020	125147
Hawaii: Maui	Maui County (19–09–1599P).	The Honorable Michael P. Victorino, Mayor, County of Maui, 200 South High Street, Kalana O Maui Building, 9th Floor, Wailuku, HI 96793.	County of Maui Planning Department, One Main Plaza, 2200 Main Street, Suite 315, Wailuku, HI 96793.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	150003

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Idaho:						
Ada	City of Boise (19–10–0196P).	The Honorable David Bieter, Mayor, City of Boise, P.O. Box 500, Boise, ID 83702.	City Hall, 150 North Capitol Boulevard, Boise, ID 83702.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 3, 2020	160002
Blaine	Unincorporated Areas of Blaine County (19–10–0919P).	The Honorable Jacob Greenberg, Chairman, Blaine County Commissioners, Blaine County District Court, 219 South 1st Avenue, Suite 300, Hailey, ID 83333.	Blaine County Planning & Zoning, 219 South 1st Avenue, Suite 208, Hailey, ID 83333.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2020	165167
Illinois: DuPage	Village of Carol Stream (19–05–1848P).	The Honorable Frank Saverino, Mayor, Village of Carol Stream, 500 North Gary Avenue, Carol Stream, IL 60188.	Village Hall, 500 North Gary Avenue, Carol Stream, IL 60188.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	170202
Indiana:						
Marion	City of Indianapolis (20–05–0050X).	The Honorable Joe Hogsett, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2020	180159
Marion	Town of Speedway (20–05–0050X).	Mr. Jacob Blasdel, Town Manager, Town of Speedway, 1450 North Lynhurst Drive, Speedway, IN 46224.	Town Hall, 1450 North Lynhurst Drive, Speedway, IN 46224.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2020	180162
Kansas: Johnson	City of Olathe (19–07–0801P).	The Honorable Michael Copeland, Mayor, City of Olathe, 100 East Santa Fe Street, Olathe, KS 66051.	City Hall, 100 East Sante Fe Street, Olathe, KS 66051.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2020	200173
Michigan: Macomb	Township of Macomb (19–05–3918P).	The Honorable Janet Dunn, Supervisor, Township of Macomb, 54111 Broughton Road, Macomb, MI 48042.	Township Hall, 54111 Broughton Road, Macomb, MI 48042.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2020	260445
Nevada:						
Washoe	City of Reno (19–09–0823P).	The Honorable Hillary Schieve, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 1 East 1st Street, Reno, NV 89501.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 7, 2020	320020
Washoe	City of Reno (19–09–1056P).	The Honorable Hillary Schieve, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 1 East 1st Street, Reno, NV 89501.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	320020
Washoe	City of Reno (19–09–1298P).	The Honorable Hillary Schieve, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 1 East 1st Street, Reno, NV 89501.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	320020
Washoe	Unincorporated Areas of Washoe County (19–09–0823P).	The Honorable Vaughn Hartung, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Building A, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 7, 2020	320019
Washoe	Unincorporated Areas of Washoe County (19–09–0887P).	The Honorable Vaughn Hartung, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Building A, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 31, 2020	320019
Washoe	Unincorporated Areas of Washoe County (19–09–1056P).	The Honorable Vaughn Hartung, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Building A, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	320019

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Washoe	Unincorporated Areas of Washoe County (19–09–1298P).	The Honorable Vaughn Hartung, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Building A, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	320019
Ohio: Warren	City of Lebanon (19–05–5135P).	The Honorable Amy Brewer, Mayor, City of Lebanon, City Hall, 50 South Broadway, Lebanon, OH 45036.	City Hall, 50 South Broadway, Lebanon, OH 45036.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 30, 2020	390557

[FR Doc. 2020–00183 Filed 1–8–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2650–19; DHS Docket No. USCIS–2019–0014]

RIN 1615–ZB82

Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is announcing the implementation of the H–1B registration process for H–1B cap-subject petitions. The initial H–1B petition registration period will begin on March 1, 2020. Starting on that date, USCIS will require H–1B cap-subject petitioners, including those eligible for the advanced degree exemption, to first register electronically with USCIS and pay the associated H–1B registration fee before being eligible to properly file an H–1B cap-subject petition for the Fiscal Year 2021 H–1B numerical allocations. USCIS intends to close the initial registration period on March 20, 2020 and will announce the actual end date on its website. After the initial registration period closes, USCIS will conduct the initial selection process, and petitioners with selected registrations will be eligible to file an H–1B cap-subject petition for those selected registrations during the associated filing period.

DATES: This notice is effective on January 9, 2020.

FOR FURTHER INFORMATION CONTACT: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060; or by phone at 202 272–8377.

SUPPLEMENTARY INFORMATION:

I. Background on H–1B Registration

On January 31, 2019, the Department of Homeland Security (DHS) published a final rule [1] requiring petitioners seeking to file H–1B cap-subject petitions, including those eligible for the advanced degree exemption, to first electronically register with USCIS during a designated registration period, unless the requirement is suspended (''H–1B registration final rule''). *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*). In the final rule, DHS announced that USCIS was suspending the registration requirement for the Fiscal Year (FY) 2020 cap season to complete all requisite user testing of the new H–1B registration system and otherwise ensure the system and process are operable. DHS has completed all requisite user testing and is implementing the registration process in advance of the H–1B cap season for FY 2021.

DHS stated in the H–1B registration final rule that it will publish a notice in the **Federal Register** to announce the initial implementation of the registration process before the first H–1B cap season that would use the process. Once USCIS implements the registration process, it will announce subsequent registration periods for each fiscal year on its website.

On November 8, 2019, DHS published a final rule amending its regulations to require a $10 fee for each registration submitted for the H–1B cap selection process. *See* 8 CFR 103.7(b)(1)(i)(NNN).

II. Participation in Registration

As explained in the H–1B registration final rule, before a petitioner can file an H–1B cap-subject petition, including those eligible for the advanced degree exemption, the petitioner must first electronically register with USCIS. *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*).

USCIS will not consider an H–1B cap-subject petition to be properly filed unless it is based on a valid registration selection for the applicable fiscal year. *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*) and (D).

III. When To Register

The initial registration period will start March 1, 2020. USCIS intends to close the initial registration period on March 20, 2020 and will announce the actual end date of the initial registration period on its website at *www.uscis.gov* pursuant to 8 CFR 214.2(h)(8)(iii)(A)(3). If USCIS determines at the end of the initial registration period that an insufficient number of registrations have been received, USCIS will determine the final registration date once it has received the number of registrations projected as needed to reach the numerical allocations. If USCIS determines that it is necessary to re-open the registration period, USCIS will announce the start of the re-opened registration period on the USCIS website at *www.uscis.gov. See* 8 CFR 214.2(h)(8)(iii)(A)(3) and (7).

IV. How To Register

Petitioners must register using an online account. USCIS will provide step-by-step instructions on its website at *www.uscis.gov.*

Employers and authorized representatives may start setting up their registration accounts in advance of the registration period opening. USCIS will post the date that employers and authorized representatives may start setting up accounts on its website. Employers and authorized representatives will be able to continue to set up accounts during the registration period and may immediately use those accounts to register. They may also set up accounts after the registration period to use for later years. A petitioner or its authorized representative must electronically submit a separate registration request

[1] *See* 84 FR 888 (Jan. 31, 2019).

naming each individual it seeks to petition for a cap-subject H–1B. Petitioners will be able to register multiple individuals in a single online session. The electronic system will allow for a filer to prepare, edit and store the record in their account prior to final payment and submission. A petitioner may only submit one registration per beneficiary in any fiscal year. *See* 8 CFR 214.2(h)(8)(iii)(A)(*2*). If a petitioner submits more than one registration for the same beneficiary in the same fiscal year, USCIS will consider all registrations filed by that petitioner for that beneficiary for that fiscal year invalid. *Id.*

V. Registration Selection

USCIS will send notices electronically to all registrants with selected registrations that they are eligible to file an H–1B cap-subject petition on behalf of the individual named in the notice within the filing period indicated on the notice. *See* 8 CFR 214.2(h)(8)(iii)(C). The notifications will be added to registration accounts. The account holder who submitted the selected registration will receive notification via email or text message stating that an action has been added to their account, and they will have to log in to see the full notice. USCIS intends to notify registrants with selected registrations from the initial registration period no later than March 31, 2020.

Chad F. Wolf,

Acting Secretary.

[FR Doc. 2020–00182 Filed 1–8–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2019–0104; FXES11140800000–201]

Endangered and Threatened Species; Receipt of an Incidental Take Permit Application and Low-Effect Habitat Conservation Plan for the Coastal California Gnatcatcher; Sunrise Project, City of San Marcos, San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for an incidental permit to take the federally listed coastal California gnatcatcher, a bird species, under the Endangered Species Act. The permit application includes a proposed low-effect habitat conservation plan (HCP). In accordance with the requirements of the National Environmental Policy Act (NEPA), we have prepared a draft low-effect screening form and environmental action statement supporting our preliminary determination that the proposed action qualifies as a categorical exclusion under NEPA. We are accepting comments on the permit application, proposed low-effect HCP, and draft NEPA compliance documentation.

DATES: To ensure consideration, please send your written comments on or before February 10, 2020.

ADDRESSES: Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R8–ES–2019–0104 at *http://www.regulations.gov*.

Submitting Comments: You may submit comments by one of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2019–0104.
- *U.S. Mail or Hand-Delivery:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2019–0104; U.S. Fish and Wildlife Service, 2177 Salk Ave, Carlsbad, CA 92008.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Mr. David Zoutendyk, Division Chief, Carlsbad Fish and Wildlife Office, 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), received an application from Sunrise Gardens Project Owner LLC (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would authorize take of the federally threatened coastal California gnatcatcher (*Polioptila californica californica*), incidental to grading, subdividing, and developing approximately 192 multi-family dwelling units, and open space, active recreational areas, bio-retention areas, circulation improvements, and a public services and facilities plan on approximately 15.51 acres in San Diego County, California.

The proposed project will impact an estimated 6.52 acres of coastal sage scrub habitat occupied by up to one pair of gnatcatchers. Although not likely to support breeding of the species, 5.90 acres of non-native wild oat grassland and 2.94 acres of disturbed habitat will also be permanently impacted and may support gnatcatcher feeding and sheltering.

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our draft low-effect screening form and environmental action statement, which is also available for public review.

Project

The project is located on a 15.51-acre site in the City of San Marcos (Assessor's Parcel Number [APN] 228–312–9–00, approximately 3.6 acres), County of San Diego (APN 228312–0–00, approximately 10.8 acres), and City of Escondido (APN 228–312–04, approximately 1.07 acres) in San Diego County, California; however, the entire project site is within the General Plan Sphere of Influence for the City of San Marcos. The applicant requests a 5-year incidental take permit for permanent impacts to 15.36 acres of occupied gnatcatcher habitat. The applicant proposes to mitigate impacts through the purchase of mitigation credits to conserve 20.03 acres of gnatcatcher-occupied coastal sage scrub habitat (17.13 acres) and southern mixed chaparral habitat (2.90 acres) off site at the Onyx Ridge property in an unincorporated portion of northern San Diego County. The off-site mitigation area provides higher quality habitat than that found on the project site and will be conserved, managed, and monitored in perpetuity. In addition, a portion of the off-site mitigation area is within designated gnatcatcher critical habitat.

The applicant's proposed HCP also contains measures to minimize the effects of construction activities on the gnatcatcher, including the following:

- Fencing the project limits;
- Not clearing gnatcatcher habitat during the nesting season;
- Providing a staff biologist on site to ensure that gnatcatchers are not in the vegetation to be cleared; and
- Monitoring and reporting to the Service upon project completion.

Our Preliminary Determination

The Service has made a preliminary determination that the project, including grading, subdividing,

construction, and the proposed mitigation, would individually and cumulatively have a minor or negligible effect on the gnatcatcher and the environment. Therefore, we have preliminarily concluded that the incidental take permit for this project would qualify for categorical exclusion as provided by our NEPA regulations at 43 CFR 46.205, 46.210, and 46.215, and that the HCP qualifies as a low-effect plan.

A low-effect HCP is one that would result in:

- Minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- Minor or negligible effects on other environmental values or resources; and
- Impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

We will evaluate the proposed HCP and any comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, we will issue the permit to the applicant for incidental take of the gnatcatcher.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Authority

We provide this notice under section 10(c) (16 U.S.C. 1539 *et seq.*) of the ESA and NEPA regulations at 40 CFR 1506.6.

Jane Hendron,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2020–00128 Filed 1–8–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20LR000F60100; OMB Control Number 1028–0065/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Production Estimate

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 10, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–0065 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720. 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 June 14, 2019, 84 FR 27797. We did not receive any public comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the ''Mineral Commodity Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Title of Collection: Production Estimate.

OMB Control Number: 1028–0065.

Form Number: USGS Forms 9–4042–A and 9–4124–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Total Estimated Number of Annual Respondents: 1,198.

Total Estimated Number of Annual Responses: 1,198.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 299.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: There are no ''nonhour cost'' burdens associated with this IC.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Michael Magyar,

Associate Director, National Minerals Information Center, USGS.

[FR Doc. 2020–00153 Filed 1–8–20; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20EF00COM00; OMB Control Number 1028–0092]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Topographic Data Grants

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 10, 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 U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–xxxx in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Diane Eldridge by email at *deldridge@usgs.gov,* or by telephone at 703–648–4521. 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 22, 2019, 84 FR 35125. No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The U.S. Geological Survey gathers topographic data through the 3D Elevation Program (3DEP). The primary goal of 3DEP is to systematically collect enhanced elevation data in the form of high-quality light detection and ranging (lidar) data over the conterminous United States, Hawaii, and the U.S. territories, as well as interferometric synthetic aperture radar (ifsar) data over Alaska. The implementation model for 3DEP is based on multi-agency partnership funding for topographic data acquisition, with the USGS acting in a lead program management role to facilitate planning and acquisition for the broader community, through the use of government contracts and partnership agreements. USGS issues cooperative agreements with partners to collect topographic data through an annual Broad Agency Announcement (BAA), which is a competitive solicitation issued to facilitate the cooperative collection of lidar and derived elevation data for the 3D Elevation Program (3DEP). It has been included in the annual Catalog of Domestic Federal Assistance under USGS 15.8 17. Federal agencies, state and local governments, tribes, academic institutions and the private sector are eligible to submit proposals. USGS collects information from applicants about their proposed topographic data collection, cost sharing and then uses that information to determine grant awards.

Title of Collection: Topographic Data Grants.

OMB Control Number: 1028–0092.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and local governments, tribes, academic institutions and the private sector are eligible to submit proposals.

Total Estimated Number of Annual Respondents: 14.

Total Estimated Number of Annual Responses: 188.

Estimated Completion Time per Response: 60 hours to apply for work order, 1 hour for Monthly report, 20 hours for final report.

Total Estimated Number of Annual Burden Hours: 1,634 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: One time annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Michael Tischler,

Director, National Geospatial Program.

[FR Doc. 2020–00156 Filed 1–8–20; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–HAFE–NPS0027927; PPWOWMADL3, PPMPSAS1Y.TD0000 (200); OMB Control Number 1024–0284]

Agency Information Collection Activities; National Park Service Common Learning Portal

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 9, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov;* or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0284 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR by mail contact Ryan Jennings, Web Products Manager, Distance Learning Group, Office of Learning and Development, Workforce Inclusion Directorate, National Park Service, 51 Mather Place, Harpers Ferry, WV 25425; or by email at *ryan_jennings@nps.gov;* or by telephone at 304–535–5057. Please reference OMB Control Number 1024–0284 in the subject line of your comments.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS is authorized by 54 U.S.C. 101321, Service Employee Training; and 54 U.S.C. 101322, Management Development and Training to maintain the Common Learning Portal (CLP). This online training platform is provided to increase communication within the NPS education community and to promote the visibility of training opportunities available to NPS employees. The CLP serves as a common platform for advertising national, regional, and park specific training events to NPS employees. The CLP also establishes communities of practice using interest groups and forums in order to increase engagement throughout the NPS training community. Users may visit the CLP to learn about upcoming training events without creating a user account. However, to participate in community forum discussions, users must to provide the following information to register and create an account:

- Name
- Email address
- Username

Once registered, the user will have the option to provide additional information to include:

- Photo
- Title, location, expertise
- Duties, and
- Additional personal information such as hobbies or activities.

To store the information collected, this system utilizes the following SORN: DOI–16, Learning Management System—October 9, 2018, 83 FR 50682. All personal information, with the exception of name and email address, are optional. An account is not required for anyone interested in visiting the CLP to learn about upcoming training events.

Title of Collection: National Park Service Common Learning Portal.

OMB Control Number: 1024–0284.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Individuals (non-federal employees).

Total Estimated Number of Annual Respondents: 250.

Total Estimated Number of Annual Responses: 250.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 21.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–00164 Filed 1–8–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–REGS–NPS0028086; PPWOVPADU0, POPFR2021.XZ0000 (200); OMB Control Number 1024–0026]

Agency Information Collection Activities; Special Park Use Applications

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before February 10, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to

Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0026 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR by mail contact Maggie Tyler, Special Park Uses Program Manager, 1849 C Street NW, Main Interior Building—Rm 2474, Washington, DC 20240; or by email at *Maggie_tyler@nps.gov.* Please reference OMB Control Number 1024–0026 in the subject line of your comments. 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.

On May 28, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on July 29, 2019 (84 FR 24538). We did not receive any public comments on this notice.

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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The legislative mandate of the National Park Service (we, NPS), found at 16 U.S.C. 1, is to conserve America's natural wonders unimpaired for future generations, while also making them available for the enjoyment of the visitor. Specific legal authorities governing special park uses include: 16 U.S.C. 1a; 16 U.S.C. 316; U.S.C. 3a; and 16 U.S.C. 460l–6d.

Special park uses cover a wide range of activities including, but not limited to, special events, First Amendment activities, grazing and agricultural use, commercial filming, still photography, construction and vehicle access. In accordance with regulations at 36 CFR parts 1–7, 13, 20, and 34, we issue permits for special park uses. Permits are issued for varying amounts of time based on the requested use, but generally do not exceed 5 years. A new application must be submitted in order to request the renewal of an existing permit.

The information we collect in the special use applications allows park managers to determine if the requested use is consistent with the laws and NPS regulations referenced above and with the public interest. The park manager must also determine that the requested activity will not cause unacceptable impacts to park resources and values. The NPS uses the following form to collect information:

- 10–930—Application for Special Use Permit;
- 10–930s—Application for Special Use Permit (short form);
- 10–930c –Climbing Application and Permit (New). Used to apply for a permit to climb in excess of 10,000 feet. The permit will be submitted as part of the checkout process after the trip.
- 10–931–Application for Special Use Permit—Commercial Filming/Still Photography Permit (short);
- 10–932—Application for Special Use Permit—Commercial Filming/Still Photography Permit (long); and,
- 10–933—Application for Special Use Permit—Vehicle/Watercraft Use.

With this submission, we are requesting OMB approval to use a new form under this information collection. To address the need for parks to collect information from hikers and climbers exceeding 10,000 feet of elevation, the program is requesting clearance of the NPS 10–930c ''Climbing Application and Permit'' to collect information associated with high elevation activities. This information includes details about the group leader, emergency contacts, climbing routes, party members, team equipment and departure and return dates.

We are estimating 80,483 responses totaling 22,872 annual burden hours. Program changes due to agency estimates and discretion results in a net increase of 46,748 responses and a net increase of 10,956 burden hours from our previous submission. The increases in both responses and burden hours includes the request for a new form (10–930c) for parks that permit climbing above 10,000 feet, and efforts to improve tracking of permits, particularly those issued for off-road vehicle use.

Title of Collection: Special Park Use Applications (portions of 36 CFR 1–7, 13, 20, and 34).

OMB Control Number: 1024–0026.

Form Number: NPS Forms 10–930, 10–930s, 10–930c, 10–931, 10–932, and, 10–933.

Type of Review: Revision of a currently approved collection.

Description of Respondents: Individuals or households; businesses or other for-profit entities; and Federal, State, local and tribal governments.

Total Estimated Number of Annual Respondents: 80,483.

Total Estimated Number of Annual Responses: 80,483.

Estimated Completion Time per Response: Forms 10–930s, 10–931 (15 minutes). Forms 10–930 and 10–930c (30 minutes).

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $6,036,225 for application fees.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–00165 Filed 1–8–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–ADIR–PMSP–NPS0028310; PPWOIRADA1, PPMPSAS1Y.TY0000 (200); OMB Control Number 1024–0280]

Agency Information Collection Activities; Certification of Identity and Consent Form

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 10, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0280 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR contact Charis Wilson, NPS Freedom of Information Act (FOIA) Officer, 12795 W Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287; or by email at *charis_wilson@nps.gov.* Please reference OMB Control Number 1024–0280 in the subject line of your comments. 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.

On October 4, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on December 3, 2019 (84 FR 53172). We did not receive any public comments on this notice.

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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS maintains law enforcement incident reports in the Department of the Interior's Incident and Management Reporting System (IMARS), which is a Privacy Act System of Records (DOI–10). In accordance with the Privacy Act (5 U.S.C. 552a(b)), the NPS is barred from releasing copies of records contained within IMARS, including but not limited to motor vehicle accident reports, without the prior written request and/or consent of the individual to whom the record pertains unless authorized under appropriate routine-use exceptions.

The purpose of the collection is to enable the NPS to respond to requests made under the FOIA and the Privacy Act of 1974 by locating applicable law enforcement case incident reports responsive to the request. Information includes sufficient personally identifiable information and/or source documents as applicable. The detailed personal information, to include the date/place of birth, as well as the requestor's Social Security Number, is needed to identify records unique to the requestor. Failure to provide the required information may result in the NPS being unable to take any action on the request.

The NPS uses Form 10–945, ''Certification of Identity and Consent'' to collect the minimal information necessary to verify the identity of first-party requesters and to document if and when they authorize the NPS to release their information to a third party. The form collects the following information to verify the identity of the requester:

- Full name of Requester;
- Case Number;
- Social Security Number;
- Current Address;
- Date of Birth; and
- Place of birth.

Title of Collection: Certification of Identity and Consent Form.

OMB Control Number: 1024–0280.

Form Number: NPS Form 10–945.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Individuals requesting copies of law enforcement case incident reports maintained within the Department of Interior's IMARS.

Total Estimated Number of Annual Respondents: 2,000.

Total Estimated Number of Annual Responses: 2,000.

Estimated Completion Time per Response: 3 minutes.

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–00166 Filed 1–8–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

United States Section; Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact for the Continued Implementation of the River Management Plan for the Rio Grande Canalization Project

AGENCY: United States Section, International Boundary and Water

Commission, United States and Mexico (USIBWC).

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations, and the USIBWC Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, the USIBWC hereby gives notice that the *Final Environmental Assessment and Finding of No Significant Impact for the Continued Implementation of the River Management Plan for the Rio Grande Canalization Project* is available.

FOR FURTHER INFORMATION CONTACT: Elizabeth Verdecchia, Natural Resources Specialist, USIBWC, 4191 N Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4701, Fax: (915) 493–2428, email: *Elizabeth.Verdecchia@ibwc.gov.*

Availability: The electronic version of the Final EA is available on the USIBWC web page: *https://www.ibwc.gov/EMD/EIS_EA_Public_Comment.html.*

SUPPLEMENTARY INFORMATION: The USIBWC prepared the EA to evaluate the environmental effects of continuing to implement the River Management Plan (RMP) for the Rio Grande Canalization Project (RGCP) in Sierra and Doña Ana Counties, New Mexico and El Paso County, Texas. The RMP covers sediment removal from the channel and lower end of tributary arroyos; vegetation management along channel banks, floodways, and levees; replacement of channel bank rip rap; maintenance of sedimentation/flood control dams in the tributary arroyos (since the construction of those dams in the early 1970s); maintenance of all RGCP infrastructure, including levee roads, bridges, and the American Diversion Dam; implementation of channel maintenance alternatives (CMAs) within the USIBWC right-of-way (ROW) as outlined in the RMP; and implementation/maintenance of habitat restoration sites. The EA evaluates potential impacts of seven alternatives, including the No Action Alternative. Under the Preferred Alternative, USIBWC would continue implementation of the RMP; designate up to 65 miles through the USIBWC ROW for the New Mexico Rio Grande Trail and Texas trails under USIBWC's lease program; conduct increased sediment removal; re-evaluate and construct additional CMAs potentially outside of the ROW; increase efforts to engage stakeholders through the Sediment Control Initiative Federal Workgroup and stakeholder groups; and transfer up to 500 acres of unsuccessful restoration (either No-Mow Zone managed grasslands or habitat restoration) to areas outside of the USIBWC jurisdiction, via partnerships.

Potential impacts on natural, cultural, and other resources were evaluated. A Finding of No Significant Impact has been prepared for the Preferred Alternative based on a review of the facts and analyses contained in the EA. Notice of the Draft EA was published in the **Federal Register** on May 31, 2019 (**Federal Register** Notice, Vol. 84, No. 105, Page 25307); USIBWC extended the original thirty-five (35) day comment period an additional thirty-one (31) calendar days for a total of sixty-six (66) days. USIBWC modified the Preferred Alternative to incorporate public input. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30 days from the date of this Notice.

Dated: December 5, 2019.

Rebecca Rizzuti,

Attorney Advisor, International Boundary and Water Commission, United States Section.

[FR Doc. 2019–27602 Filed 1–8–20; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–612–613 and 731–TA–1429–1430 (Final)]

Polyester Textured Yarn From China and India

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of polyester textured yarn from China and India, provided for in subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the governments of China and India.[2]

Background

The Commission instituted these investigations effective October 18, 2018, following receipt of petitions filed with the Commission and Commerce by Unifi Manufacturing, Inc., Greensboro, North Carolina; and Nan Ya Plastics Corp. America, Lake City, South Carolina. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of polyester textured yarn from China and India were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 29, 2019 (84 FR 36619). The hearing was held in Washington, DC, on November 13, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on January 3, 2020. The views of the Commission are contained in USITC Publication 5007 (January 2020), entitled *Polyester Textured Yarn from China and India: Investigation Nos. 701–TA–612–613 and 731–TA–1429–1430 (Final).*

By order of the Commission.

Issued: January 3, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00129 Filed 1–8–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on November 29, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on polyester textured yarn from China.

15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Society of Clinical Oncology, Alexandria, VA; Richard Norman (individual member), Gjoik, NORWAY; The Cure Parkinson's Trust, London, UNITED KINGDOM; Zofia Jordan (individual member), Welwyn Garden City, UNITED KINGDOM; Thermo Fisher Scientific, Waltham, MA; Arctoris Ltd., Oxford, UNITED KINGDOM; Statice GmbH, Berlin, GERMANY; Valtari Bio Inc., Austin, TX; LabVoice, Durham, NC; and Nick Juty (individual member), Manchester, UNITED KINGDOM, have been added as parties to this venture.

Also, Clarity Genomics BVBA, Berse, BELGIUM; uFraction8 Ltd., Falkirk, UNITED KINGDOM; Genialis Inc., Houston, TX; Devendra Deshmukh (individual member), Shrewsbury, MA; Envision Biotechnology Inc., Grandsville, MI; MediSapiens Ltd., Helsinki, FINLAND; and Pharmacelera, Sant Cugat del Valles, SPAIN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on September 10, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 17, 2019 (84 FR 55586).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–00154 Filed 1–8–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on December 11, 2019 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between September 11, 2019 and December 5, 2019, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on September 17, 2019. A notice was filed in the **Federal Register** on November 18, 2019 (84 FR 63678).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–00155 Filed 1–8–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2

Notice is hereby given that, on December 4, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2 (''Permian Basin—Phase 2'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Diamondback E&P LLC, Midland, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Permian Basin—Phase 2 intends to file additional written notifications disclosing all changes in membership.

On August 15, 2019, Permian Basin—Phase 2 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2019 (84 FR 48377).

The last notification was filed with the Department on October 29, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 25, 2019 (84 FR 64923).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–00157 Filed 1–8–20; 8:45 am]

BILLING CODE 4410–11–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0208]

Supplemental Guidance Regarding the Chromium-Coated Zirconium Alloy Fuel Cladding Accident Tolerant Fuel Concept

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG) ATF–ISG–2020–01, ''Supplemental Guidance Regarding the Chromium-Coated Zirconium Alloy Fuel Cladding Accident Tolerant Fuel Concept.'' This ISG is intended to facilitate the NRC staff's understanding of the in-reactor phenomena important

to safety for the chromium-coated zirconium alloy fuel cladding concepts, as well as to provide guidance for NRC staff reviewing vendor applications. Chromium-coated zirconium alloy fuel cladding concepts are being pursued by several U.S. fuel vendors as part of the U.S. Department of Energy's accident tolerant fuel program.

DATES: This guidance is effective on February 10, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0208 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0208. 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 individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ISG, ''Supplemental Guidance Regarding the Chromium-Coated Zirconium Alloy Fuel Cladding Accident Tolerant Fuel Concept,'' is available in ADAMS under Accession No. ML19343A121.
- *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: Tekia Govan, Office of Nuclear Reactor Regulation, telephone: 301–415–6197 email: *Tekia.Govan@nrc.gov* and Michael Orenak, Office of Nuclear Reactor, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On October 24, 2019, (84 FR 57058) the NRC requested public comments on draft ATF ISG–2019–01 (ADAMS Accession No. ML19276G621). The NRC received comments from the Nuclear Energy Institute by letter dated November 25, 2019 (ADAMS Accession No. ML19344C125). No other comments were submitted. The NRC staff considered those comments in developing the final ATF–ISG 2019–01. Detailed responses to the comments can be found in Appendix E of the final ATF–ISG 2019–01.

This ISG is intended to provide guidance for NRC staff reviewing applications involving fuel products with chromium-coated zirconium alloy cladding. For coated claddings of this type, a phenomena identification and ranking table (PIRT) was generated for the NRC by Pacific Northwest National Laboratory; the guidance provided in this ISG extensively references the PIRT report, ''Degradation and Failure Phenomena of Accident Tolerant Fuel Concepts: Chromium Coated Zirconium Alloy Cladding,'' issued June 2019. The suggested cladding properties specified acceptable fuel design limits and new failure mechanisms sections from the PIRT are replicated in Appendices B and C. These appendices supersede Sections 5.1 and 5.2 of the PIRT report.

This ISG is not intended as stand-alone review guidance, but instead supplements NUREG–0800, ''Standard Review Plan,'' Section 4.2, ''Fuel System Design,'' and discusses the potential impact of coated claddings on reviews performed under Standard Review Plan (SRP), Section 4.3, ''Nuclear Design,'' Section 4.4, ''Thermal and Hydraulic Design,'' and Chapter 15, ''Transient and Accident Analysis.'' In addition to the guidance provided in this ISG, reviewers of coated cladding applications should familiarize themselves with the PIRT report and with the relevant sections of the SRP.

The PIRT report and this ISG focus primarily on metallic chromium coatings applied to a zirconium alloy base metal, with some additional discussion that is applicable to chromium-based ceramic coatings. Reviewers of submittals on ceramic chromium-coated zirconium alloy claddings should carefully read the PIRT to determine the applicability to the review.

This ISG does not apply to reviews of fuel products other than metallic or ceramic chromium-based coatings on a zirconium alloy substrate.

II. Backfit Discussion

This ISG intends to provide guidance for the NRC staff reviewing applications involving fuel products with chromium-coated zirconium alloy cladding. Issuance of this ISG does not constitute a backfit as defined in section 50.109(a)(1) of title 10 of the *Code of Federal Regulations* (10 CFR) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Backfitting'' section of the final ATF–ISG–2020–01, the ISG positions do not constitute backfitting, inasmuch as the ISG is guidance directed to the NRC staff with respect to its regulatory responsibilities. Applicants and potential applicants are not, with certain exceptions, the subject of either the Backfit Rule or any issue finality provisions under 10 CFR part 52. The NRC staff has no intention to impose the ISG positions on existing nuclear power plant licensees either now or in the future (absent a voluntary request for a change from the licensee).

III. Congressional Review Act

This ISG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 3rd day of January 2020.

For the Nuclear Regulatory Commission.

Tekia V. Govan,

Project Manager, Oversight and Support Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–00124 Filed 1–8–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87886; File No. SR–LCH SA–2019–012]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Amendments of the CDSClear Fee Grid

January 3, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. LCH SA filed the proposal pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The proposed rule change is to review and modify the current fee grid applied by LCH SA CDSClear.

The text of the proposed rule change has been annexed [sic] as Exhibit 5.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

1. Purpose

The purpose of the proposed fee changes is for LCH SA CDSClear to (1) modify the annual fixed fee amount that covers all Index and Single Name CDS self-clearing activity for a General Clearing Member and its affiliates under the Unlimited Tariff, and (2) revise the CDSClear fee grid set up for the Options clearing service for both General and Select Members.

LCH SA is currently applying the below fee grid for CDSClear members:

CURRENT SELF-CLEARING TARIFF FOR CORPORATES AND FINANCIALS INDEX AND SINGLE NAME CDS

Membership	Annual fixed fee	Self-clearing/variable fees				
		EUR indices	EUR single names	USD indices	USD single names	
General Member—Unlimited Tariff.	€1,700,000	No Variable Fee				Covers all self-clearing Corporate and Financials CDS Index and Single Name activity for a Clearing Member and its affiliates.
General Member—Introductory Tariff.	€200,000 if the total annual gross notional cleared is under €15 billion.	€3.5 Per million gross notional cleared.	€10 Per million gross notional cleared.	$4.5 Per million gross notional cleared.	$13 Per million gross notional cleared.	Cap on total annual self-clearing fees (fixed + variable) of EUR 1,700,000 after which all further trades cleared in the calendar year are subject to a fee holiday.
	€400,000 if the total annual gross notional cleared is over €15 billion.	€3.5 Per million gross notional cleared.	€10 Per million gross notional cleared.	$4.5 Per million gross notional cleared.	$13 Per million gross notional cleared.	
Select Member ..	€250,000 if the total annual gross notional cleared is under €25 billion.	€4 Per million gross notional cleared.	€10 Per million gross notional cleared.	$5 Per million gross notional cleared.	$13 Per million gross notional cleared.	
	€450,000 if the total annual gross notional cleared is over €25 billion.	.....	.....	.....	.....	

CURRENT OPTIONS TARIFF INCLUDING FEE REBATE: GENERAL MEMBER

	General Member	
Introductory Tariff	Cover only one legal entity (no affiliate coverage).	
Clearing Fees	$15	Per million of option notional on U.S. Indices.
	€15	Per million of option notional on European Indices.
Floor on clearing fees"	*€150k*	*Per calendar year (no pro-rating).*
Cap on Clearing fees	*€600k*	*Per calendar year (no pro-rating).*
Unlimited Tariff	Cover all affiliates of a given Clearing Member Group. Cover all clearing fees for Credit Option House activity for both iTraxx and CDX.NA underlying index families. Excludes any potential future EEP usage fees.	
Fixed fee (annual)	*€375k*	*Per calendar year (no pro-rating).*
Discounted Rates *	*€50k*	*After discount rate of 86.67% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €12 billion.*
	€75k	*After discount rate of 80.00% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €6 billion but equal or below €12 billion.*
	€125k	*After discount rate of 67.00% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €0 but equal or below €6 billion.*
Onboarding Fees (both Introductory & Unlimited)	€30k	One-off fee per Legal Entity under the Introductory tariff or per Clearing Member Group under Unlimited tariff waived until 20–Dec–19.

*** Cumulative conditions for the Fee rebate:**

(i) Application to the Unlimited Tariff only;
(ii) application to all Clearing Members registering to the Index Swaptions clearing service (registration letter or application file signature date); and
(iii) Valid for 2019 only; and

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

[4] 17 CFR 240.19b–4(f)(2).

CURRENT OPTIONS TARIFF INCLUDING FEE REBATE: GENERAL MEMBER—Continued

(iv) Index Swaptions notional cleared for the determination of the discount rate to be observed from the regulatory effective date of the rebate.

CURRENT OPTIONS TARIFF INCLUDING FEE REBATE: SELECT MEMBER AND CLIENT

Select Member		
Introductory Tariff	Cover only one legal entity (no affiliate coverage).	
Clearing Fees	$18 €18	Per million of option notional on U.S. Indices Per million of option notional on European Indices.
Cap on Clearing fees	*€600k*	*Per calendar year (no pro-rating).*
Unlimited Tariff	Covers all affiliates of a given Clearing Member Group. Covers all clearing fees for Credit Option House activity for both iTraxx and CDX.NA underlying index families. Excludes any potential future EEP usage fees.	
Fixed fee (annual)	*€400k*	*Per calendar year (no pro-rating).*
*Discounted Rates **	*€50k*	*After discount rate of 87.50% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €12 billion.*
	€75k	*After discount rate of 81.25% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €6 billion but equal or below €12 billion.*
	€125k	*After discount rate of 68.75% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group per year strictly above €0 but equal or below €6 billion.*
Onboarding Fees (both Introductory & Unlimited)	€30k	One-off fee per Legal Entity under the Introductory tariff or per Clearing Member Group under Unlimited tariff waived until 20–Dec–19.

* Cumulative conditions for the Fee rebate:

(v) Application to the Unlimited Tariff only;
(vi) application to all Clearing Members registering to the Index Swaptions clearing service (registration letter or application file signature date); and
(vii) Valid for 2019 only; and
(viii) Index Swaptions notional cleared for the determination of the discount rate to be observed from the regulatory effective date of the rebate.

Client		
Clearing Fees	$20 €20	Per million of option notional on U.S. Indices. Per million of option notional on European Indices.

As specified in the new fee grid attached [sic] under Exhibit 5, LCH SA is proposing to amend the CDSClear fee grid from January 1st, 2020.

The proposed fee changes are driven by the will:

—For the Index and Single Names Unlimited Tariff: To reflect a transition to a more matured phase of development of the CDSClear service, and

—for the Options fee grid: to adjust the discount bands and rates following a beginning of uptake of the options service, and to ensure coherence in the maximum amount of fees payable between the Introductory and the Unlimited Tariffs.

(1) Change the Index and Single Names Unlimited Tariff for General Members From €1,700,000 per Year to €1,300,000 per Year for 2020

CDSClear currently offers an Unlimited Tariff for General Members [5] that covers all self-clearing Corporate and Financials CDS Index and Single Names activity for a Clearing Member group and its affiliates for an annual fixed fee of €1,700,000 (no variable fees).

The proposed change consists in decreasing the annual fixed fee amount to €1,300,000 per year. This fixed fee will still cover all clearing fees for Corporate and Financials Index and Single Names CDS House activity for all affiliates of a given Clearing Member group.

(2) Change the Options Unlimited Tariff for Both General and Select Members

As specified in the new LCH CDSClear options fee grid attached [sic] below in Appendix, the annual fixed fee covering all clearing fees for Credit Index Options House activity for all affiliates of a given Clearing Member group remains set in 2020 to €375,000 for General Members and €400,000 for Select Members, but it is proposed to change the discount based notional bands and rates as follows:

General Member Discount Bands and Rates

—Change the bounds on the annual options notional cleared for the lowest band from *strictly above €0bn but equal to or below €6bn* into *strictly above €6bn but equal to or below €13.5bn,* and the corresponding discount rate from 66.67% (equivalent to an annual fixed fee of €125,000) to 60% (equivalent to an annual fixed fee of €150,000);

—Change the bounds on the annual options notional cleared for the middle band from *strictly above €6bn but equal to or below €12bn* into *strictly above €13.5bn,* but keep the corresponding discount rate at 80% (equivalent to an annual fixed fee of €75,000); and

—Remove the highest band from the fee grid.

Select Member Discount Bands and Rates

—Change the bounds on the annual options notional cleared for the lowest band from *strictly above €0bn but equal to or below €6bn* into *strictly above €6bn but equal to or below €13.5bn,* and the corresponding discount rate from 68.75% (equivalent to an annual fixed fee of €125,000) to 62.5% (equivalent to an annual fixed fee of €150,000);

—Change the bounds on the annual options notional cleared for the middle band from *strictly above €6bn but equal to or below €12bn* into *strictly above €13.5bn,* but keep the corresponding discount rate at 81.25% (equivalent to an annual fixed fee of €75,000); and

[5] All capitalized terms not defined herein have the same definition as the CDSClearing Rule Book, Supplement or Procedures, as applicable.

— Remove the highest band from the fee grid.

(3) Change the Options Introductory Tariff for Both General and Select Members

The Options Introductory Tariff for both General and Select Members covers only the legal entity that is registering to the service and is based on variable fees with an annual floor (for General Members only) and cap on the total variable fees paid. The only change proposed to this Introductory Tariff is to align the annual cap with the fixed fee in the Unlimited Tariff as follows:

— For General Members, decrease the annual cap on variable fees from €600,000 to €375,000
— For Select Members, decrease the annual cap on variable fees from €600,000 to €400,000.

(4) Additional Changes to the Options Fee Grid for Both General and Select Members

The following conditions will be applicable for both General and Select Members:

— In-year switches between Introductory and Unlimited Tariff are not permitted, and
— The one-off onboarding fee will remain set to €30,000 but waived until 30 April 2020.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.[6]

LCH SA believes that its clearing fee change proposal is consistent with the requirements of Section 17A of the Act[7] and the regulations thereunder applicable to it, and in particular provides for the equitable allocation of reasonable fees, dues, and other charges among clearing members and market participants by ensuring that clearing members and clients pay reasonable fees and dues for the services provided by LCH SA, within the meaning of Section 17A(b)(3)(D) of the Act.

With respect to the change of the Index and CDS Unlimited Tariff for General Members, LCH SA has determined in consultation with its clearing members that the reduction in the annual fixed fee for General Members covering their Index and Single Name CDS self-clearing activity is reasonable and appropriate as the CDSClear business is now reaching a more mature stage in its development and therefore requires a lower investment to develop new functionalities/services than in the past.

Regarding the proposed changes to the Options clearing service fee grid, after consultation with its Clearing Members, LCH SA has determined that both its General and Select Members still needed to be incentivized to further grow their usage of the Options clearing service, and thus to maintain a volume-based discount fee scheme for its Options Unlimited Tariff in which the cost of clearing options decreases as more volumes are cleared. In order to make the link between Unlimited Tariff and Introductory Tariff coherent between the Index & Single Names fee grid on one hand and the Option fee grid on the other hand, LCH SA has also set the cap for its Options Introductory Tariff at the same level than the fixed fee of the Option Unlimited Tariff, and thus decreased it from €600k to respectively €375k for General Members and €400k for Select Members. Additionally, both General and Select Clearing Members will not have the ability to switch from one type of Tariff to the other (Unlimited to Introductory or vice-versa) in-year.

Finally, the one-off Onboarding Fee to the Options clearing service will remain set to €30,000 but the waiving period will be extended until 30 April 2020.

For all the reasons stated above, LCH SA believes that the proposed fee rates are reasonable and have been set up at an appropriate level so that LCH SA can provide the CDSClear services.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[8]

LCH SA does not believe that the proposed rule change would impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act because LCH SA is offering the possibility for CDSClear members and clients to get a more attractive access to the clearing services. It does not affect the ability of such Clearing Members or other market participants generally to engage in cleared transactions or to access clearing services especially to the clearing of Index Swaptions that remains not mandatory.

Additionally, the proposed volume based discount scheme for the Options Unlimited Tariff will be available to all CDSClear Clearing Member Groups. Similarly, the proposed Index and Single Names Unlimited Tariff will be available to all General Members of the CDSClear service. This annual fixed fee reduction does not impact any competition between General and Select Members as the choice of membership tier made by a Clearing Member is mainly driven by the material differences in the obligations of a General Member versus those of a Select Member (in terms of price contribution and auction bidding notably) which are reflected in the Tariffs available for each tier.

Further, as explained above, LCH SA believes that the fee rates have been set up at an appropriate level given the costs and expenses to LCH SA in offering the relevant clearing services.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received but a consultation has been conducted with and feedback sought from CDSClear members. No comment or question has been received following this consultation. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and Rule 19b–4(f)(2)[10] thereunder because it establishes a fee or other charge imposed by LCH SA on its Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such proposed 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.

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:

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(I).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(2).

• 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–LCH SA–2019–012 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–LCH SA–2019–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0.* 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–LCH SA–2019–012 and should be submitted on or before January 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00118 Filed 1–8–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87885; SR–NYSEArca–2019–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Innovator PTAM Core Bond Fund ETF Under NYSE Arca Rule 8.600–E

January 3, 2020.

On October 30, 2019, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Innovator PTAM Core Bond ETF, and on November 8, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change was published for comment in the **Federal Register** on November 19, 2019.[3] The Commission did not receive any comment letters on the proposed rule change.

On December 18, 2019, the Exchange withdrew the proposed rule change (SR–NYSEArca–2019–78), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00117 Filed 1–8–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87514 (November 13, 2019), 84 FR 63929.

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before February 10, 2020.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations require that we determine that a participating Certified Development Company's Non-Bank Lender Institutions or Microlender's management, ownership, etc. is of ''good character''. To do so requires the information requested on the Form 1081. This form also provides data used to determine the qualifications and capabilities of the lenders key personnel.

Solicitation of Public Comments

Title: Statement of Personal History.

Description of Respondents: Small Business Lending Companies.

Form Number: 1081.

Estimated Annual Responses: 151.

Estimated Annual Hour Burden: 108.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–00175 Filed 1–8–20; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on February 6, 2020, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The

Commission will also hear testimony on a proposed policy—*Guidance For The Preparation Of A Metering Plan & A Groundwater Elevation Monitoring Plan For Water Withdrawals, Consumptive Uses, And Diversions.* Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 13, 2020, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is February 17, 2020.

DATES: The public hearing will convene on February 6, 2020, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is February 17, 2020.

ADDRESSES: The public hearing will be conducted at the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423; fax: (717) 238–2436. Information concerning the applications for these projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover a proposed policy as posted on the SRBC Public Hearing web page at *https://www.srbc.net/about/meetings-events/public-hearing.html.* The public hearing will also cover the following projects.

Projects Scheduled for Action

1. Project Sponsor and Facility: ARD Operating, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.340 mgd (peak day) (Docket No. 20160301).

2. Project Sponsor and Facility: EQT Production Company (Wilson Creek), Duncan Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20160305).

3. Project Sponsor and Facility: New Holland Borough Authority, New Holland Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.860 mgd (30-day average) from Well 5.

4. Project Sponsor and Facility: New Morgan Borough Utilities Authority, New Morgan Borough, Berks County, Pa. Modification to remove expired Well PW–3 and to recognize the interconnection with Caernarvon Township Authority. Well PW–3 automatically expired consistent with Condition 25 of the approval due to lack of commencement of withdrawal (Docket No. 20141207).

5. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20160310).

6. Project Sponsor and Facility: SWN Production Company, LLC (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.218 mgd (peak day) (Docket No. 20160311).

7. Project Sponsor and Facility: Towanda Municipal Authority, Albany Township, Bradford County, Pa. Application for groundwater withdrawal of up to 0.551 mgd (30-day average) from the Eilenberger Spring.

8. Project Sponsor: York Haven Power Company, LLC. Project Facility: York Haven Hydroelectric Project, Londonderry Township, Dauphin County; Conoy Township, Lancaster County; and York Haven Borough and Newberry Township, York County, Pa. Application for approval of an existing hydroelectric facility.

Project Scheduled for Action Involving a Diversion

9. Project Sponsor: Gas Field Specialists, Inc. Project Facility: Wayne Gravel Products Quarry, Ceres Township, McKean County, Pa. Application for renewal of an into-basin diversion from the Ohio River Basin of up to 1.170 mgd (peak day) (Docket No. 20160312).

Commission-Initiated Project Approval Modification

10. Project Sponsor and Facility: Susquehanna Valley Country Club, Monroe Township, Snyder County, Pa. Conforming the grandfathering amount with the forthcoming determination for a groundwater withdrawal up to 0.162 mgd (30-day average) from the Front Nine Well (Docket No. 20020814).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any business listed above required to be subject of a public hearing. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing room will begin at 2:00 p.m. and Commission staff will be available for questions prior to the commencement of the hearing. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before February 17, 2020, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: January 6, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–00159 Filed 1–8–20; 8:45 am]

BILLING CODE P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: December 1–31, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period

specified above: Grandfathering Registration Under 18 CFR part 806, subpart E:

1. Carmeuse Lime & Stone, Inc.—Carmeuse Lime, Inc., GF Certificate No. GF–201912060, North Londonderry and South Annville Townships, Lebanon County, Pa.; Quarry Reservoir; Issue Date: December 5, 2019.

2. Eagles Mere Country Club, GF Certificate No. GF–201912061, Eagles Mere Borough and Shrewsbury Township, Sullivan County, Pa.; Eagles Mere Lake; Issue Date: December 5, 2019.

3. High Company LLC—High Concrete Group LLC, GF Certificate No. GF–201912062, East Cocalico Township, Lancaster County, Pa.; Kurtz Quarry; Issue Date: December 5, 2019.

4. Village of Johnson City—Water Department, GF Certificate No. GF–201912063, Town of Union, Broome County, N.Y.; Wells 1, 2, 3, 5, 6, and 7; Issue Date: December 5, 2019.

5. Town of Owego—Water District #2, GF Certificate No. GF–201912064, Town of Owego, Tioga County, N.Y.; Wells 1 and 2; Issue Date: December 5, 2019.

6. Port Matilda Borough—Port Matilda Waterworks, GF Certificate No. GF–201912065, Worth Township, Centre County, Pa.; Wells 3 and 5; Issue Date: December 5, 2019.

7. SUEZ Water Pennsylvania Inc.—Mechanicsburg Operation, GF Certificate No. GF–201912066, Mechanicsburg Borough, Cumberland County, Pa.; Market Street Well; Issue Date: December 5, 2019.

8. Bucknell University, GF Certificate No. GF–201912067, East Buffalo Township, Union County, Pa.; Wells 2 and 3; Issue Date: December 5, 2019.

9. Manada Golf Club, Inc., GF Certificate No. GF–201912068, East Hanover Township, Dauphin County, Pa.; Fourth Tee Well, Fifth Tee Well, and Barn Well; Issue Date: December 5, 2019.

10. Pennsylvania Fish & Boat Commission—Pleasant Gap State Fish Hatchery, GF Certificate No. GF–201912069, Benner Township, Centre County, Pa.; Blue and East Springs, Hoy and Shugert Springs, and Logan Branch; Issue Date: December 5, 2019.

11. Heidelberg Township—Public Water Supply System, GF Certificate No. GF–201912070, Heidelberg Township, Lebanon County, Pa.; Well 3; Issue Date: December 19, 2019.

12. Pennsylvania American Water Company—Frackville District, GF Certificate No. GF–201912071, Frackville Borough and West Mahanoy Township, Schuylkill County, Pa.; Wells 1, 2, and 3, and the Nice Street Well; Issue Date: December 19, 2019.

13. Moccasin Run Golf Club, Inc., GF Certificate No. GF–201912072, West Fallowfield Township, Chester County, Pa.; Irrigation Pond; Issue Date: December 19, 2019.

14. South Middleton Township Municipal Authority—Public Water Supply System, GF Certificate No. GF–201912073, South Middleton Township, Cumberland County, Pa., Wells 1 and 2; Issue Date: December 19, 2019.

15. SUEZ Water Pennsylvania Inc.—Grantham Operation, GF Certificate No. GF–201912074, Upper Allen Township, Cumberland County, Pa., Well 1; Issue Date: December 19, 2019.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: January 6, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–00160 Filed 1–8–20; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0896]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Flight Attendant Fatigue Risk Management Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 1, 2019. The collection involves submission of Fatigue Risk Management Plans (FRMP) for flight attendants of certificate holders operating under Title 14 of the Code of Federal Regulations. The certificate holders will submit the information to be collected to the FAA for review and acceptance as required by Section 335(b) of Public Law 115–254, the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by February 10, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel T. Ronneberg by email at: *Dan.Ronneberg@faa.gov;* phone: 202–267–1612.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Flight Attendant Fatigue Risk Management Plan.

Form Numbers: There are no forms associated with this collection.

Type of Review: Clearance of a new information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 1, 2019 (84 FR 58816). On October 5, 2018, Congress enacted Public Law 115–254, the FAA Reauthorization Act of 2018 (''the Act''). Section 335(b) of the Act required each certificate holder operating under 14 CFR part 121 to submit to the FAA for review and acceptance a Fatigue Risk Management Plan (FRMP) for each certificate holder's flight attendants. Section 335(b) contains the required contents of the FRMP, including a rest scheme consistent with current flight time and duty period limitations and development and use of methodology to continually assess the effectiveness of the ability of the plan to improve alertness and mitigate performance errors. Section 335(b) requires that each certificate holder operating under 14 CFR part 121 shall update its FRMP every two years and submit the update to the FAA for review and acceptance. Further, section 335(b) of the Act

requires each certificate holder operating under 14 CFR part 121 to comply with its FRMP that is accepted by the FAA.

Respondents: 70 Part 121 Air Carriers.

Frequency: Once for initial acceptance of the plan, then every two years for submission of an updated plan.

Estimated Average Burden per Response: 20 hours for air carriers submitting the initial plan for review and acceptance and 5 hours for air carriers submitting an updated plan.

Estimated Total Annual Burden: 20 hours per air carrier submitting the initial plan for review and acceptance, 5 hours every two years for update and resubmission of the plan.

Issued in Washington, DC on January 6, 2020.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.

[FR Doc. 2020–00138 Filed 1–8–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0097]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on November 7, 2019, the Monticello Railway Museum (MRMZ) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2019–0097.

MRMZ maintains and operates Southern No. 401, a 2–8–0 ''Consolidation'' type steam locomotive built by the Baldwin Locomotive Works in 1907 for the Southern Railway.

Specifically, MRMZ requests relief from 49 CFR 230.16(a)(2), *Fifth annual inspection,* of flexible staybolts and caps, due in April 2020. Southern No. 401 typically operates 20 service days each year, one weekend of each month between May and October, pulling tourist trains on a 7.5-mile round trip. The locomotive received a new boiler in 2005 and was placed into service in September 2010. Because the first flue was installed in May 2005, the locomotive will be due for a 1,472 service day inspection (SDI) in May 2021 as set forth by 49 CFR 230.17, *One thousand four hundred seventy-two (1472) service day inspection.* Southern No. 401 has accrued 100 service days since the previous fifth annual flexible staybolt inspection in 2015. Allowing the relief would add an estimated 20 service days to the locomotive before its next 1,472 SDI.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 24, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–00127 Filed 1–8–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0002]

Establishment of an Emergency Relief Docket for Calendar Year 2020

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2020. The designated ERD for calendar year 2020 is docket number FRA–2020–0002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to Docket No. FRA–2020–0002.

SUPPLEMENTARY INFORMATION: On May 19, 2009, FRA published a direct final rule establishing ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009 and made minor modifications to 49 CFR 211.45 in FRA's Rules of Practice in 49 CFR part 211. Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available at *www.regulations.gov*). Section 211.45(b) further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. FRA established the ERD and emergency waiver procedures to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces the designated ERD for calendar year 2020 is docket number FRA–2020–0002.

As detailed in § 211.45, if the FRA Administrator determines an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of

such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its website at *www.fra.dot.gov.* Any party desiring relief from FRA regulatory requirements as a result of the emergency should submit a petition for emergency waiver under 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers under 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are at 49 CFR 211.45(h).

Privacy

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* See also *www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–00176 Filed 1–8–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0045]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that on October 11, 2019, the Long Island Rail Road (LIRR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings. FRA assigned the petition Docket Number FRA–2008–0045.

LIRR requested to extend its waiver of the requirement in § 222.21(a), which requires that a railroad sound its locomotive horn in a specific manner (two long, one short, and one long blast) as it approaches and enters public highway-rail grade crossings. Specifically, LIRR requested that FRA continue to allow it to sound one short blast when departing from 22 train stations identified in LIRR's initial February 6, 2008 waiver request (FRA–2008–0045–0001). The original waiver granted by FRA included 23 stations; however, one of those stations (Little Neck) has since been included in a designated quiet zone, and therefore is not part of this extension request. All of these 22 stations are located in close proximity to public highway-rail grade crossings.

LIRR noted in its initial request, as well as in its first extension request on October 16, 2013, that the waiver was in the public interest and was consistent with railroad safety. As there have been no materially changed circumstances since the waiver commenced, LIRR now requests that the waiver be extended.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 24, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–00125 Filed 1–8–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0085]

Petition for Special Approval of Alternative Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR) and 49 CFR 238.21, this provides the public notice that on October 16, 2019, the California Department of Transportation (Caltrans) petitioned the Federal Railroad Administration (FRA) for a special approval of alternative compliance pursuant to the requirements in 49 CFR part 238, Passenger Equipment Safety Standards. FRA assigned the petition Docket Number FRA–2019–0085.

Specifically, Caltrans seeks relief from 49 CFR 238.135(b), which requires that all passenger train exterior side doors and trap doors must be closed when a train is in motion between stations. Caltrans seeks special approval of alternative compliance to allow variations in the operating of boarding stair trap doors for its fleet of single-level coach, cab cars and café/vending cars built by Siemens, due to the cars' unique construction.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- F*ax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 24, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–00126 Filed 1–8–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Small Shipyard Grant Program; Application Deadlines

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Small Shipyard Grants Application deadlines.

SUMMARY: Under the Small Shipyard Grant Program, $19,600,000 is currently available for grants to: (1) Make capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration, and (2) provide training for workers in shipbuilding, ship repair, and associated industries.

This notice announces the intention of the Maritime Administration to provide for grants to small shipyards. Catalog of Federal Domestic Assistance Number: 20.814. Potential applicants are advised that it is expected, based on experience, that the number of applications will far exceed the funds available and that only a small percentage of applications will be funded. It is anticipated that roughly 8–20 applications will be selected for funding with an average grant amount of about $1 million.

Timing of Grant Applications

In accordance with the statutory requirement at 46 U.S.C. 54101(f)(1) that applications must be submitted within 60 days of the Consolidated Appropriations Act, 2020 (Pub. L. 116–94, December 20, 2019), applications must be received by the Maritime Administration by 5 p.m. EDT on February 18, 2020. Applications received later than this time will not be considered. The Administrator shall award grants under this section not later than 120 days after the date of the enactment of the appropriations Act for the fiscal year concerned.

ADDRESSES: Grant Applications should be sent to the Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Only applicants who comply with all submission requirements described in this notice will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318, 1200 New Jersey Ave. SE, Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988.

SUPPLEMENTARY INFORMATION: Grants under the Maritime Administration's Small Shipyard Grant Program may not be used to construct buildings or other physical facilities or to acquire land. Grant funds may be used for maritime training programs to foster employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. Grants for such training programs may only be awarded to ''Eligible Applicants'' as described below, but training programs can be established through vendors to such applicants.

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A. Program Description

The Small Shipyard Grant Program was authorized under Section 3501 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), codified at 46 U.S.C. 54101. The statute authorizes the Maritime Administrator to provide assistance in the form of grants to make capital and related improvements in small shipyards and to provide training for workers in shipbuilding, ship repair, and associated industries. The Consolidated Appropriations Act, 2020, appropriated $20,000,000 to the Small Shipyard Grant Program. Per 46 U.S.C. 54101, 2 percent of the funds may be set aside for grant administration. Therefore, the total amount available for grant awards is $19,600,000. The purpose of the Program is to foster efficiency, competitive operations, and quality ship construction, repair, and reconfiguration in small shipyards across the United States in addition to fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries.

B. Federal Award Information

Under the Small Shipyard Grant Program, $19,600,000 is available for grants for: (1) Capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (2) training projects that would be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. MARAD intends to award the full amount of available funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities in one geographic location that have more than 600 production employees. MARAD will seek to obtain the maximum benefit from the available funding by awarding grants to as many of the worthiest projects as possible. MARAD may partially fund applications by selecting parts of the total project.

The start date and period of performance for each award will depend on the specific project and must be agreed to by MARAD. MARAD will administer each Small Shipyard Grant pursuant to a grant agreement with the Small Shipyard Grant recipient. Amounts awarded as a grant under this notice that are not expended by the recipient shall remain available to the Administrator for use for grants under this program, either in the same or different fiscal year as this notice.

C. Eligibility Information

To be selected for a Small Shipyard Grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

1. Eligible Applicants

Section 54101, Title 46, United States Code, provides that shipyards can apply for grants. The shipyard facility for which a grant is sought must be in a single geographic location and may not have more than 1,200 production employees. The applicant must be the operating company of the shipyard facility. The shipyard facility must construct, repair, or reconfigure vessels 40 feet in length or greater for commercial or government use, or construct, repair, or reconfigure vessels 100 feet in length or greater for non-commercial vessels.

2. Cost Sharing or Matching

The Federal funds for any eligible project will not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the recipient. The applicant is required to submit detailed financial statements and supporting documentation demonstrating how and when such matching requirement is proposed to be funded as described below. The recipient's entire matching requirement must be paid prior to payment of any Federal funds for the project.

3. Eligible Projects

Eligible projects include: (1) Capital and related improvement projects that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (2) training projects that will be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. For capital improvement projects, all items proposed for funding must be new and to be owned by the applicant. For both capital improvement and training projects, all project costs, including the recipient's share, must be incurred after the date of the grant agreement.

D. Application and Submission Information

1. Address for Application

Applications must be filed on standard form SF–424, which is available on MARAD's website at *www.marad.dot.gov.*

2. Content and Form of Application Submission

Although the form is available electronically, the application must be filed in hard copy as indicated below due to the amount of information requested. Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two CDs each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. A shipyard facility in a single geographic location applying for multiple projects must do so in a single application. The application for a grant must include all of the following information as an addendum to form SF–424. The information should be organized in sections as described below:

Section 1: A description of the shipyard including (a) location of the shipyard; (b) a description of the shipyard facilities; (c) years in operation; (d) ownership; (e) customer base; (f) current order book including type of work; (g) vessels delivered (or major projects) over last 5 years; and (h) website address, if any.

Section 2: For each project proposed for funding the following must be included:

(a) A comprehensive detailed description of the project, including a statement of whether the project will replace existing equipment, and if so, the disposition of the replaced equipment.

(b) A description of the need for the project in relation to shipyard operations and business plan and an explanation of how the project will fulfill this need.

(c) A quantitative analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration (for capital improvement projects) or how the project will be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. The analysis should quantify the benefits of the projects in terms of man-hours saved, dollars saved, percentages, or other meaningful metrics. The methodology of the analysis should be explained with assumptions used, identified, and justified.

(d) A detailed methodology and timeline for implementing the project.

(e) A detailed itemization of the cost of the project together with supporting documentation, including current vendor quotes and estimates of installation costs.

(f) A statement explaining if any elements of the project require action under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) or require any licenses or permits.

Items 2(a) thru 2(f) should be repeated, in order, for each separate project included in the application.

Section 3: A table with a prioritized list of projects and total cost and Federal government share (in dollars) for each.

Section 4: A description of any existing programs or arrangements, if any, which will be used to supplement or leverage the Federal grant assistance.

Section 5: Shipyard company officer's certification of each of the following requirements:

(a) That the shipyard facility for which a grant is sought is in a single geographic location and (i) the shipyard facility has no more than 600 production employees, or (ii) the shipyard facility has more than 600 production employees, but less than 1200 production employees (the

shipyard officer must certify to one or the other of (i) or (ii));

(b) That the applicant has the authority to carry out the proposed project; and

(c) In accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant. Certifications are not required to be notarized.

Section 6: Unique entity identifier of shipyard's parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).

Section 7: The most recent year-end audited, reviewed, or compiled financial statements, prepared by a certified public accountant (CPA), per U.S. generally accepted accounting principles (not tax-based accounting financial statements). If CPA prepared financial statements are not available, provide the most recent financial statement for the entity. Do not provide tax returns.

Section 8: Statement regarding the relationship between applicants and any parents, subsidiaries or affiliates, if any such entity is going to provide a portion of the match.

Section 9: Evidence documenting applicant's ability to make proposed matching requirement (loan agreement, commitment from investors, cash on balance sheet, etc.) and in the times outlined in 2(d) above.

Section 10: Pro-forma financial statements reflecting (a) financial condition beginning of period; (b) effect on balance sheet of grant and matching funds (*e.g.* a decrease in cash or increase in debt, additional equity and an increase in fixed assets); and (c) impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.

Section 11: Statement whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

Section 12: Consistent with the Department's R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), A strong transportation network is critical to the functioning and growth of the American economy. The nation's industry depends on the transportation network to move the goods that it produces, and facilitate the movements of the workers who are responsible for that production. When the nation's highways, railways, and ports function well, that infrastructure connects people to jobs, increases the efficiency of delivering goods and thereby cuts the costs of doing business, reduces the burden of commuting, and improves overall well-being.

Rural transportation networks play a vital role in supporting our national economic vitality. Addressing the deteriorating conditions and disproportionately high fatality rates on our rural transportation infrastructure is of critical interest to the Department, as rural transportation networks face unique challenges in safety, infrastructure condition, and passenger and freight usage. Consistent with the R.O.U.T.E.S. Initiative, the Department encourages applicants to consider how the project will address the challenges faced by rural areas.

Applicants should also state whether a project is located in a Qualified Opportunity Zone designated pursuant to 26 U.S.C. 1400Z–1.

Additional information may be requested as deemed necessary by MARAD to facilitate and complete its review of the application. If such information is not provided, MARAD may deem the application incomplete and cease processing it.

3. Unique Entity Identifier and System for Award Management (SAM)

MARAD may not make a Small Shipyard Grant Award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. Each applicant must be registered in SAM before submitting its application, provide a valid unique entity identifier number in its application, and maintain an active SAM registration with current information throughout the period of the award. Applicants may register with the SAM at *www.SAM.gov.* If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. MARAD may not make a Federal award until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time MARAD is ready to make a Federal award, MARAD may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times

Applications must be received by the Maritime Administration by 5 p.m. EDT on February 18, 2020. Applications received later than this time will not be considered. MARAD encourages applicants to submit applications using a carrier and method that will provide proof and time of delivery. The Administrator shall award grants under this section not later than 120 days after the date of the enactment of the appropriations Act for the fiscal year concerned.

5. Funding Restrictions

Grants under MARAD's Small Shipyard Grant Program may not be used to construct buildings or other physical facilities or to acquire land.

6. Other Submission Requirements

Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two compact discs (CDs) each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE, Washington, DC 20590.

E. Application Review Information

1. Selection Criteria

This section specifies the criteria that MARAD will use to evaluate and award applications for Small Shipyard grants. The criteria incorporate the statutory eligibility requirements for this Program, which are specified in this notice as relevant.

Consistent with the requirements of 46 U.S.C. 54101(b)(1), MARAD will evaluate the applications on the basis of how effective the project will be in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration (for capital improvement projects) or how effective the project will be in fostering employee skills and enhancing productivity related to shipbuilding, ship repair, and associated industries.

After applying the above preferences, the Maritime Administrator will consider the following key Departmental objectives:

(A) Supporting economic vitality at the national and regional level;

(B) Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;

(C) Accounting for the life-cycle costs of the project to promote the state of good repair;

(D) Using innovative approaches to improve safety and expedite project delivery; and,

(E) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

MARAD may also consider whether a project is located in a Qualified Opportunity Zone designated pursuant to 26 U.S.C. 1400Z–1.

As a secondary criteria, higher considerations for award shall be made if applicants' percentage match contribution toward the overall project is greater than the minimum and greater than other competing grant applications.

Rural transportation networks play a vital role in supporting our national economic vitality. Addressing the deteriorating conditions and disproportionately high fatality rates on our rural transportation infrastructure is of critical interest to the Department, as rural transportation networks face unique challenges in safety, infrastructure condition, and passenger and freight usage. Consistent with the R.O.U.T.E.S. Initiative, the Department will consider how the project will address the challenges faced by rural areas. The Department's R.O.U.T.E.S. Initiative can be found at (*https://www.transportation.gov/rural*).

2. Review and Selection Process

MARAD reviews all eligible applications received before the deadline. The Small Shipyard Grant review and selection process consists of three phases: Technical Review, Senior Review, and Final Selection. In the Technical Review phase, a Review Panel made up of technical experts, including naval architects and engineers from MARAD's Office of Shipyards and Marine Engineering will review all timely applications. Additional input may be provided to the Review Panel on economic issues by the Office of Financial Approvals, on environmental issues by the Office of Environment, and on legal issues by the Office of Chief Counsel. The Review Panel will assign a rating of ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended'' based on how well the applications align with the selection criteria. In addition, higher considerations for award shall be made if applicants' percentage match contribution toward the overall project is greater than the minimum and greater than other competing grant applications.

In the second review phase, the Senior Review Team, which is led by the Maritime Administrator, will consider applications based upon the input of the Review Panel. The Senior Review Team will determine which projects to advance to the Secretary. In the third phase, the Secretary selects projects for final award.

3. FAPIIS Check

MARAD is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. MARAD will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, and after the required notice to Congress, MARAD will announce awarded projects by posting a list of selected projects at *www.marad.dot.gov/ships-and-shipping/small-shipyard-grants.* Following the announcement, MARAD will contact the point of contact listed in the SF–424 to initiate development of the grant agreement.

2. Administrative and National Policy Requirements

All awards must be administered pursuant to applicable Federal laws, rules, and regulations of MARAD.

Federal wage rate requirements included in Subchapter IV of Chapter 31 of Title 40, United States Code, apply to all projects receiving funds under this Program, and apply to all parts of the project, whether funded with Small Shipyard Grant funds, other Federal funds, or non-Federal funds.

3. Reporting

Each applicant selected for a Small Shipyard capital or training grant will be required to work with MARAD on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through the capital project or training. Performance indicators will not include formal goals or targets, but will require analysis of post-project outcomes, which will inform the Small Shipyard Grant Program in working towards best practices, programmatic performance measures, and future decision-making guidelines.

4. Requirements for Products Produced in the United States

As expressed in Executive Orders 13788 of April 18, 2017 and 13858 of January 31, 2019, it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States in the terms and conditions of Federal financial assistance awards. Section 3507 of the National Defense Authorization Act for Fiscal Year 2020 includes a requirement for Small Shipyard Grantees to comply with Buy America requirements, codified at 46 U.S.C. 54101(d)(2). Subject to few exceptions, these requirements state that no funds may be obligated by MARAD for this program unless each product or material purchased with these funds (including products and materials purchased by a grantee), and including any commercially available off-the-shelf item, is:

(i) An unmanufactured article, material, or supply that has been mined or produced in the United States; or

(ii) A manufactured article, material, or supply that has been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

Applications that use grant funds for domestic-content purchases will be viewed more favorably. If a project intends to use any product with foreign content or of foreign origin, this information should be listed and addressed in the application. Applications should expressly address how the applicant plans to comply with domestic-preference requirements. If an applicant anticipates any potential foreign-content issues with its proposed project, applications should demonstrate that the domestic source is not available and how that determination was achieved. If certain foreign content is granted an exception or waiver from Buy American or Buy America requirements, a Cargo Preference requirement may apply.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact David M.

Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318, 1200 New Jersey Ave. SE, Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988. To ensure applicants receive accurate information about eligibility or the Program, you are encouraged to contact MARAD directly, rather than through intermediaries or third parties, with questions.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, you should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. MARAD protects such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, MARAD will follow the procedures described in the Department of Transportation FOIA regulations at 49 CFR 7.29. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Authority: 46 U.S.C. 54101 and the Consolidated Appropriations Act, 2020, Public Law 116–94, December 20, 2019.

Dated: January 6, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2020–00163 Filed 1–8–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or ''Department''), Treasury proposes to establish a new system of records titled, ''Department of the Treasury—.018 E-Rulemaking System of Records'' under the Privacy Act of 1974 for the online collection through the Federal Docket Management System and/or *Regulations.gov* of public comments to notices of proposed rulemaking, proposed orders, and other policy or regulatory actions that are published in the **Federal Register** or rules or rule amendments, petitions, and other input collected from the public that may not be associated with statutory or regulatory notice and comment requirements.

DATES: Submit comments on or before February 10, 2020. The new routine uses will be applicable on February 10, 2020 unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the Federal E-Rulemaking Portal electronically at *http://www.regulations.gov.* Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, Departmental Offices, 1750 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public records and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

I. E-Rulemaking

In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'') proposes to establish a new system of records titled, ''Department of the Treasury—.018 E-Rulemaking System of Records.''

Treasury collects comments on rulemakings and other regulatory actions, which it timely publishes on a website to provide transparency in the informal rulemaking process under the Administrative Procedure Act (''APA''), 5 U.S.C. 553. The Treasury also may solicit comments or other input from the public that may not be associated with statutory or regulatory notice and comment requirements.

During an informal rulemaking or other statutory or regulatory notice and comment process, Department personnel may manually remove a comment from posting if the commenter withdraws his or her comments before the comment period has closed or because the comment contains obscenities or other material deemed inappropriate for publication by the Treasury. However, comments that are removed from posting will be retained by the Department for consideration, if appropriate under the APA.

Below is the description of the new Treasury—.018 E-Rulemaking System of Records.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB, pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

II. The Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, a ''system of records'' is defined as any group of records under the control of a federal government agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act establishes the means by which government agencies must collect, maintain, and use personally identifiable information associated with an individual in a government system of records.

Each government agency is required to publish in the **Federal Register** a notice of a new system of records in which the agency identifies and describes the system of records, the reasons why the agency uses the personally identifying information therein, the routine uses for which the agency will disclose such information outside the agency, and how individuals may exercise their rights under the Privacy Act to determine if the system contains information about them.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury—.018 E-Rulemaking.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at:

a. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220

b. General Services Administration, 1800 F St NW, Washington, DC 20006

SYSTEM MANAGER(S):

Privacy Act Officer, 1750 Pennsylvania Avenue NW, Washington, DC 20220.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; Administrative Procedure Act, Public Law 79–404, 60 Stat. 237; 5 U.S.C. 553 *et seq.,* and rules and regulations promulgated thereunder.

PURPOSE(S) OF THE SYSTEM:

To collect and maintain in an electronic system feedback from the public and industry groups regarding proposed rules and other Treasury regulatory actions in accordance with the Administrative Procedure Act (''APA'') or other statutory or regulatory provisions, as well as input on Treasury actions that may not be associated with notice and comment requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals providing comments or other input to the Treasury in response to proposed rules, industry filings or other Treasury request for comments associated with Treasury rules, notices, policies or procedures, whether the individuals provide comments or input directly or through their representatives. Any individuals who may be discussed or identified in the comments or input provided by others to the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming comments or other input to the Treasury in response to proposed rules, or other Treasury request for comments associated with Treasury rules, policies or procedures, provided to the Treasury electronically, by facsimile or postal mail or delivery service. Comments or input submitted to Treasury may include the full name of the submitter, an email address and the name of the organization, if an organization is submitting the comments. The commenter may optionally provide job title, mailing address and phone numbers. The comments or input provided may contain other personal information, although the comment submission instructions advise commenters not to include additional personal or confidential information.

This system excludes comments or input for which the Treasury has received and either has approved or not yet decided a Freedom of Information Act or Privacy Act Request.

RECORDS SOURCE CATEGORIES:

Individuals and organizations providing comments or other input to the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information or portions thereof maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To appropriate federal, state, local, and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) To a contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(4) To a congressional office from the records of an individual in response to an inquiry from that congressional office made pursuant to a written Privacy Act waiver at the request of the individual to whom the records pertain;

(5) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) To the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(8) To other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is needed for the conduct of government business, and

(9) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or Departmental Offices suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or Departmental Offices has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or Departmental Offices (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or Departmental Offices' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(10) To another Federal agency or Federal entity when the Department of the Treasury and/or Departmental Offices determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(11) To General Services Administration for purposes of operating the E-Rulemaking system.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name, social security number, email address, electronic identification number and/or access/security badge number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention and disposal period depends on the nature of the comments

or input provided to the Treasury. For example, comments that pertain to a Treasury proposed rule becomes part of the Treasury's central files and are kept permanently. Other input to the Treasury may be kept between one and 10 years, depending on the subject matter.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances.

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of similar sensitivity. Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in a locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

The GSA information technology system that hosts *regulations.gov* and FDMS is in a facility protected by physical walls, security guards, and requiring identification badges. Rooms housing the information technology system infrastructure are locked, as are the individual server racks. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance.

Records in FDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intrusion detection, encryption, identification and authentication of users.

Partner agencies manage their own access to FDMS through their designated partner agency account managers. Each designated partner agency account manager has access to FDMS. This level of access enables them to establish, manage, and terminate user accounts limited to their own agency.

RECORDS ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any records contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendix A.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2020–00145 Filed 1–8–20; 8:45 am]

BILLING CODE 4810–25–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meeting

TIME AND DATE: January 16, 2020, from 9:00 a.m. to 6:00 p.m., Eastern time.

PLACE: The Towers at Wildwood, 3200 Windy Hill Road SE, Suite 600W, Atlanta, GA. This meeting will also be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in the meeting.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board Education and Training Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Unified Carrier Registration Plan

January 16, 2020

Education and Training Subcommittee Meeting

Agenda

Open to the Public

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee and confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of meeting notice on the UCR website and in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair

For Discussion and Possible Action

The Subcommittee Agenda will be reviewed and the Subcommittee will consider adoption.

Ground Rules

- ➢ Subcommittee action only to be taken in designated areas on agenda
- ➢ Please MUTE your phone
- ➢ Please do not place the call on HOLD

IV. Approval of Minutes From October 16, 2019 Meeting—UCR Operations Manager

For Discussion and Possible Action

- Minutes from the October 16, 2019 Education and Training Subcommittee meeting will be reviewed. The Subcommittee will consider action to approve.

V. Review of Project Goals—UCR Education Manager

The UCR Education Manager will lead a discussion covering the following topics:

i. Creation of education and training modules and setting their priority. Initial training modules; Enforcement (specifically new entrant audit training, inspection training, and compliance review), UCR Overview (or UCR 101), National Registration System (NRS), and New Carriers

ii. Discuss intended audience, intention of training modules (including objectives and desired outcomes), and determination of how to quantify success and obtain consensus on key performance indicators (metrics)

VI. Discussion of Learning Format—UCR Technology Director

The UCR Technology Director will discuss with the Subcommittee format options for education modules:

i. Webinars
ii. Live trainings
iii. Voice synced with PowerPoint slides
iv. Recorded live-action/voice overs
v. Other potential formats.

VII. Content Development—UCR Education Manager

The UCR Education Manager will lead a discussion to identify key topics for each of the following proposed education/training modules:

i. Enforcement
ii. UCR Overview Module (working title: UCR 101)
iii. National Registration System
iv. New Carriers

VIII. Review Results of Needs Assessment Survey—UCR Education Manager

The UCR Education Manager will review results from the recent needs-assessment survey and lead a discussion about the findings.

IX. Review Action Items—UCR Operations Manager

The UCR Operations Manager will review proposed next steps and seek consensus from the Subcommittee.

X. Other Business—Subcommittee Chair

The Subcommittee Chair will call for any other items the committee members would like to discuss.

XI. Adjournment—Subcommittee Chair

Subcommittee Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern daylight time, January 7, 2020 at: *https://ucrplan.org.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2020–00218 Filed 1–7–20; 11:15 am]

BILLING CODE 4910–YL–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 6 January 9, 2020

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

Federal Deposit Insurance Corporation

12 CFR Part 345

Community Reinvestment Act Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2018–0008]

RIN 1557–AE34

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AF22

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury and Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking; request for comment.

SUMMARY: Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) propose regulations that could encourage banks to provide billions more each year in Community Reinvestment Act-qualified lending, investment, and services by modernizing the Community Reinvestment Act (CRA) regulations to better achieve the law's underlying statutory purpose of encouraging banks to serve their communities by making the regulatory framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, this proposed rule would strengthen the CRA regulations by clarifying which activities qualify for CRA credit, updating where activities count for CRA credit, creating a more transparent and objective method for measuring CRA performance, and providing for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Community Reinvestment Act Regulations'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2018–0008'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

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FDIC: You may submit comments, identified by RIN 3064–AF22, by any of the following methods:

• *Agency Website: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency website.

• *Email: Comments@fdic.gov.* Include the RIN 3064–AF22 on the subject line of the message.

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

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

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FOR FURTHER INFORMATION CONTACT:

OCC: Vonda Eanes, Director for CRA and Fair Lending Policy, Bobbie K. Kennedy, Technical Expert for CRA and Fair Lending, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649–5470; or Allison Hester-Haddad, Counsel, Emily R. Boyes, Counsel, or Elizabeth Small, Senior Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; Cassandra Duhaney, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6804; Pamela Freeman, Senior Examination Specialist, Examination Branch, Division of Depositor and Consumer Protection, (202) 898–3656; Jessica Thurman, Examination Specialist, Examination Branch, Division of Depositor and Consumer Protection, (202) 898–3578; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; or Sherry Ann Betancourt, Counsel, Legal Division, (202) 898–6560, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Community Reinvestment Act of 1977 (CRA) encourages insured depository institutions [1] (banks) [2] to help meet the credit needs of the local communities in which they are chartered, consistent with banks' safe and sound operations, by requiring federal banking regulatory agencies to examine banks' records of meeting the credit needs of their entire community, including low- and moderate-income (LMI) neighborhoods.[3] The CRA was one of several laws enacted in the 1960s and 1970s to address fairness and access to housing and credit. During this period, Congress passed the Fair Housing Act in 1968,[4] to prohibit discrimination in renting or buying a home,[5] and the Equal Credit Opportunity Act in 1974 [6] (amended in 1976), to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide the legal basis for prohibiting discriminatory lending practices, such as redlining.[7]

Congress enacted the CRA with the purpose of encouraging sound lending to all areas of a bank's community. Specifically, in passing the CRA, Congress found that (1) banks are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[8]

The Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) [9] as well as the Board of Governors of the Federal Reserve System (Board) previously issued regulations to implement the statute.[10] Since then, the agencies and the Board have issued, revised, and sought to clarify the CRA regulations several times. The last major revisions to the regulations were made in 1995.[11]

During the past 25 years, technology and the expansion of interstate banking have transformed the financial services industry, how banks deliver their services, and how customers choose to bank. These changes affect banks of all sizes and are most evident in banks that have a limited physical presence or rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities have evolved beyond those that are solely identifiable by the delineated areas surrounding banks' physical locations.

At the same time, communities' needs for community development (CD) lending and investment have evolved, and the agencies have gained a greater understanding of those needs, such as the need for CD investments and loans with maturities longer than the typical CRA evaluation period and the need for equity and capital in addition to credit. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their CD loans and investments to shorter terms than otherwise may be best to meet the needs of their communities.

Over the last decade, stakeholders have called for comprehensive changes to the CRA regulatory framework to ensure that the CRA remains a relevant and powerful tool for encouraging banks to serve the needs of their entire communities, including LMI neighborhoods. In 2014, the agencies and the Board conducted a decennial review of their regulations, with input from the public, to identify outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burden on insured depository institutions—while, at the same time, ensuring the safety and soundness of these institutions and of the financial system.[12] In 2017, the agencies and the Board issued a report to Congress that included a summary of the public comments and recommendations to improve the CRA regulatory framework gathered during the three-year review process. Among the most frequently raised issues were (1) the assessment

[1] 12 U.S.C. 1813(c)(2).

[2] As used throughout this notice, the term ''bank'' or ''banks'' also includes uninsured Federal branches that result from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

[3] Community Reinvestment Act of 1977, Public Law 95–128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. 2901 *et seq.*

[4] 42 U.S.C. 3601 *et seq.*

[5] 42 U.S.C. 3604–3606.

[6] 15 U.S.C. 1691 *et seq.*

[7] *Interagency Fair Lending Examination Procedures,* p. iv (Aug. 2009), *available at https://www.ffiec.gov/pdf/fairlend.pdf.*

[8] 12 U.S.C. 2901(a).

[9] The OCC is the primary regulator for national banks and federal savings associations. The FDIC is the primary Federal regulator for state-chartered non-member banks and savings associations.

[10] 12 CFR parts 25, 195, 228, and 345. The Office of Thrift Supervision and its predecessor agencies were also charged with implementing the CRA. Its powers and duties with respect to CRA were transferred to the OCC in Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1520 (2010).

[11] The agencies and the Board made additional substantive changes in 2005; however, those changes were not as transformative as the 1995 revisions.

[12] The review is required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104–208, 110 Stat. 3009, 3311 (1996), *codified at* 12 U.S.C. 3311 (1996).

area definition; (2) incentives for banks to serve LMI, unbanked, underbanked, and rural communities; (3) regulatory burdens associated with the recordkeeping and reporting requirements and the asset thresholds for the various CRA examination methods; (4) the need for clarity regarding performance measures and better training to ensure consistency and rigor in CRA examinations; and (5) refinement of the CRA ratings methodology.[13]

On April 3, 2018, the U.S. Department of the Treasury (Treasury Department) also released recommendations based on stakeholder input to modernize the CRA regulations. These recommendations included updating the definition of assessment areas, increasing the clarity and transparency of CRA ratings, improving the timeliness of evaluations, and incorporating more effective incentives to encourage banks to meet the credit and deposit needs of their communities.[14]

Recognizing the need for modernization, the agencies began to assess and update the CRA regulatory framework in 2018 by working together on an Advance Notice of Proposed Rulemaking (ANPR). The OCC issued the ANPR in August 2018, which reflected feedback and input from the FDIC and the Board.[15] The OCC received more than 1,500 comments from stakeholders and shared these comments with the FDIC and the Board. Additionally, the OCC and the Board separately engaged with stakeholders, including civil rights organizations, community groups, members of Congress, academics, and banks to obtain their perspectives and feedback on all aspects of the CRA and potential improvements that could be made to the regulations. Many of those comments reflected the opinion that the current CRA regulatory framework lacks objectivity, transparency, and fairness. Numerous stakeholders also commented that the framework is applied inconsistently and is hard to understand.

The agencies' extensive engagement with stakeholders confirmed that the CRA remains a powerful tool for promoting community revitalization and increasing financial activity in neighborhoods across the country. However, stakeholders observed that the evaluation of banks' CRA-qualifying lending, investments, and services (collectively, qualifying activities or CRA activities) under the current CRA regulations—including what type of activities count, where they count, and how they count—is inconsistent, opaque, and complex.

In response to this feedback, the agencies propose to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the proposal would clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. These changes would encourage banks to serve their entire communities, including LMI neighborhoods, more effectively through a clearer set of CRA activities and would provide clarity for all stakeholders.

The agencies' proposal would establish a regulatory framework with the goal to encourage banks to conduct more CRA activities and to serve more of their communities, including those areas with the greatest need for economic development, investment, and financing needs, such as urban and rural areas and opportunity zones, that may be underserved by the current regulations.

II. Background

Prior to drafting this proposal, the agencies invited and considered input from a wide range of stakeholders, through a variety of channels. That input included the strengths, weaknesses, and challenges of the current framework, as well as ideas for, and the advantages and disadvantages of, alternative frameworks.

In 2018, the OCC held numerous meetings with community groups, non-profit and civil rights organizations, legislators, regulators, bankers, and other stakeholders to discuss and solicit input on how to improve the current framework. During this same period, the Treasury Department invited a diverse group of stakeholders to provide feedback on how the CRA regulations could more effectively encourage economic growth in the communities that banks serve. As discussed above, in April 2018, the Treasury Department released its findings and recommendations for how to modernize the CRA regulatory framework, which are consistent with the four components of modernization outlined in this proposal.[16]

In August 2018, the OCC issued an ANPR inviting public input on how best to improve the CRA regulatory framework to generate more local and national CD and economic development activities—and thus promote economic opportunity—by encouraging banks to engage in more lending, investments, and services that benefit targeted populations (such as LMI individuals, small farms, and small businesses) and areas in need of financial services (including LMI communities, rural and urban areas, and areas targeted by a Federal, state, local, or tribal government for development). The ANPR sought comment on (1) clarifying, expanding, and listing the types of activities that qualify for CRA credit; (2) revisiting how to delineate the areas in which qualifying activities receive credit; (3) establishing objective ways to evaluate CRA performance; (4) improving the timeliness of regulatory decisions related to the CRA; and (5) reducing the cost and burden, and improving the timely completion, of CRA evaluations.

During the summer of 2019, the OCC engaged in nationwide outreach with community advocates, CD professionals, civil rights organizations, and bankers to discuss opportunities to bring more CRA investment, lending, and services to underserved areas. This outreach included visits to rural and urban areas and Indian country. The tours provided opportunities for the agency's senior leadership to hear CRA success stories and how the agencies could help CRA work better for everyone. While these conversations confirmed that CRA has been a force for good for the past 40 years, they also highlighted the need to strengthen the regulatory framework to encourage greater CRA activity and to more effectively reach underserved communities.

The most consistent feedback that the agencies and the Treasury Department have received in response to their outreach efforts is that the current CRA

[13] *See* Federal Financial Institutions Examination Council, *Joint Report to Congress. Economic Growth and Regulatory Paperwork Reduction Act,* pp. 41–48 (March 2017), *available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[14] *See* Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, *Community Reinvestment Act—Findings and Recommendations* (April 3, 2018) *available at https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf.*

[15] *See* OCC News Release 2018–87 (Aug. 28, 2018); 83 FR 45053 (Sept. 5, 2018).

[16] Press Release, U.S. Department of the Treasury, Treasury Releases Community Reinvestment Act Modernization Recommendations (April 3, 2018), *available at https://home.treasury.gov/news/press-releases/sm0336.*

framework has not kept pace with changes in banking or technology and that the CRA regulations and guidance have become cumbersome, outdated, and complex. Moreover, stakeholders conveyed that the lack of clarity and transparency of the current framework has restricted lending and investments in communities across America. For example, stakeholders expressed concern and frustration that under the current system:

- Ambiguity over what types of activities qualify for CRA consideration discourages certain types of CRA activity in high-need areas;
- ''CD'' and ''economic development'' are narrowly defined, and the current definitions provide little incentive for banks to engage in many of the loan products, investments, and services that could help their communities;
- Assessment areas that are only delineated around banks' physical locations result in geographies where banks do not engage in or engage in only limited CRA activities (CRA deserts) and fail to incentivize CRA activity in many rural areas;
- Assessment areas have not kept pace with how consumers bank and how banking services are delivered today;
- Performance evaluations and ratings are subjective and inconsistent; and
- Publication of a bank's CRA performance evaluation, following its CRA evaluation, is often delayed, which can result in a significant gap between publication of consecutive evaluations.

The feedback also provided valuable insight from stakeholders and revealed broad support for modernizing the CRA regulations by clarifying what type of activities count, updating where CRA activities count, making performance evaluations more objective, and improving reporting.[17] For example, of those ANPR commenters who addressed the issues below:

- The vast majority do not think the current framework is objective, fair, or transparent;
- The vast majority think the current framework is applied inconsistently;
- The vast majority say the current framework is hard to understand;
- The vast majority support publishing a list of eligible activities;
- The majority support objective measurement of CRA performance, although they oppose a single metric;
- Many support retaining performance context; and
- The majority support expanding assessment areas.

As discussed below, the changes outlined in this proposal focus on many of these stakeholders' concerns with the current framework. The proposed rule is designed to achieve the following positive outcomes desired by many stakeholders:

- *Create incentives to do more*—By establishing clear benchmarks based on historical performance, the proposed rule would allow regulators to set benchmarks at levels high enough to increase the level of qualifying lending, investment, and services and adjust those benchmarks on a periodic basis.
- *Reduce CRA deserts*—By clarifying how banks can achieve a satisfactory or an outstanding in their assessment areas and expanding when banks can receive credit beyond the immediate areas surrounding bank branches, the new rule would incent greater CRA activity in areas currently in need of financial resources, including rural areas, areas identified for aid, distressed areas, and Indian country.
- *Limit CRA hotspots*—By clarifying and expanding when banks can receive credit beyond the immediate areas surrounding bank branches, the proposed rule would relieve pressure in overheated markets where banks are already meeting community needs.
- *Reduce activity uncertainty*—By providing clear standards and an illustrative list of qualifying activities, the proposed rule would reduce uncertainty regarding what counts for CRA credit and give banks and stakeholders greater ability to plan reinvestment activities without the risk of activities not receiving credit. The rule would also provide processes for confirming an activity would receive CRA credit.
- *Reduce delays in Performance Evaluation (PE) publication*—By making the evaluation of CRA performance more objective and improving reporting, the revised rule would reduce the time required to conduct CRA evaluations and produce PEs, improving transparency and increasing regulatory efficiency.
- *Improve the quality of PEs*—By making evaluation of CRA performance more objective and standardized, the proposed rule would help make PEs more useful, comparable across banks, and meaningful for stakeholders.
- *Increase small business lending*—By increasing the loan size for small loans to business, which was last updated 25 years ago, and increasing the revenue size threshold for small businesses, the proposed rule would encourage economic development and job creation.
- *Increase small farm lending*—By increasing the loan size for small loans to farms, which was last updated 25 years ago, and increasing the revenue size threshold for small farms, the proposed rule would encourage economic development and job creation and help the U.S. agricultural industry survive.
- *Promote capital and investment in Indian country*—By providing credit for retail and community development activities in Indian country, the proposed rule would help incent more investment and lending in Indian country. This would help fight persistent poverty and support basic infrastructure and needs such as housing, technology, and healthcare.
- *Encourage long-term commitment to community reinvestment*—By refocusing on ongoing commitment to lending and investment through evaluating on-balance sheet activities, the proposed rule would reduce the current churn and short-term focus of CRA activities, providing banks more incentive to engage in long-term investments and loans, which would, in turn, provide community developers and advocates greater stability and more incentive to engage in longer term strategic initiatives.
- *Reduce displacement by refocusing on LMI individuals and activities*—By emphasizing lending and services provided to or benefiting LMI individuals, the proposed rule would avoid giving credit for activities that may contribute to displacement.
- *Preserve the importance of branches*—By requiring banks to designate assessment areas surrounding branches, headquarters, and deposit taking ATMs and including a measure of a bank's distribution of branches when assessing the impact of CRA activities, the proposed rule would maintain the importance of branches in assessing a bank's record of serving its communities.
- *Preserve community voices*—By retaining performance context and a means for community stakeholders to share comments and concerns with examiners about assessment area needs and opportunities, the proposed rule would preserve community voices and help encourage banks to meet the needs of their entire communities, including LMI neighborhoods.

[17] For example, comments on the ANPR came from a variety of stakeholders, including banks and banking industry trade associations; community, civil rights, and advocacy groups and community trade associations; CD funds and organizations; academia; CRA consultants; governmental entities; and the general public. The OCC also met with commenters to discuss issues related to the ANPR. Summaries of these meetings, as well as all comments received on the ANPR, are available at *https://www.regulations.gov/docket?D=OCC-2018-0008.*

• *Reduce inconsistent application of the rule*—By clarifying what counts and increasing the objectivity of CRA performance evaluations, the proposed rule would make performance evaluations more consistent over time and across regions.

• *Provide greater flexibility for community banks*—The proposed rule also would provide an opt in for small banks with assets of $500 million or less to allow the bank to determine whether to be evaluated under existing performance standards or the revised framework based on their unique business models.

III. Overview of Proposed Rule

The proposed rule builds upon the outreach efforts that have been underway for several years and reflects the agencies' collaborative process to find solutions to mutually recognized problems. To improve the current CRA regulatory framework and promote increased lending and investment consistent with stakeholder feedback, the agencies propose to make changes in four key areas: (1) Clarifying and expanding what qualifies for CRA credit; (2) expanding where CRA activity counts; (3) providing an objective method to measure CRA activity; and (4) revising data collection, recordkeeping, and reporting. The following sections provide a brief overview of the proposal's significant changes in those areas.

A. Clarifying and Expanding What Qualifies for CRA Credit

The proposal would (1) establish clear criteria for the type of activities that qualify for CRA credit, which generally would include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA but may not qualify under the current CRA framework; (2) require the agencies to publish periodically a non-exhaustive, illustrative list of examples of qualifying activities; and (3) establish a process for banks to seek agency confirmation that an activity is a qualifying activity.[18]

These changes would address current impediments to engaging in CRA activities and provide banks with greater certainty and predictability regarding whether certain activities qualify for CRA credit. Specifically, by providing banks with greater confidence that activities qualify for CRA credit before they invest time and resources in those activities, the proposed rule would incentivize banks to more readily engage in innovative projects that have a significant impact on the community. Moreover, by allowing stakeholders to confirm that activities qualify, the proposal would eliminate the uncertainty in the current regulations that potentially limited the scope and type of banks' CRA activities that will benefit banks' communities, particularly LMI individuals and areas.

In addition to providing transparency, the proposed qualifying activities criteria would expand the types of activities that qualify for CRA credit to recognize that some banks are currently serving community needs in a manner that is consistent with the statutory purpose of CRA but are not receiving CRA credit for those activities. This expansion would ensure that banks help meet the needs of their entire communities, particularly LMI neighborhoods and other areas and populations of need. The expanded qualifying activities criteria would focus on economically disadvantaged individuals and areas in banks' communities. For example, the proposed qualifying activities criteria would expand the activities that qualify in areas that have traditionally lacked sufficient access to financial services, such as (1) distressed areas; (2) underserved areas, including areas where there is a great need for banking activities but few banks that engage in activities (known as banking deserts); and (3) Indian country. Moreover, to maintain a focus on LMI individuals, the proposal would, for example, no longer permit a mortgage loan to a high-income individual living in a low-income census tract to qualify for CRA credit.

B. Expanding Where CRA Activity Counts

The proposal would preserve assessment areas surrounding banks' facilities and expand where CRA activity counts to help banks meet the needs of their communities. To ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and conduct a substantial portion of their lending activity, banks would still be required to delineate assessment areas around their main office, branches, or non-branch deposit-taking facilities as well as the surrounding areas where banks have originated or purchased a substantial portion of their loans. These areas would be identified as ''facility-based'' assessment areas. In addition, to recognize the evolution of modern banking (including the emergence of internet banks), the fact that many banks receive large portions of their deposits from outside their facilities-based assessment areas, and in conformity with the CRA's intent to ensure that banks help meet credit needs where they collect deposits,[19] the proposed rule would require banks to delineate additional, non-overlapping ''deposit-based'' assessment areas where they have significant concentrations of retail domestic deposits. Specifically, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas would be required to delineate deposit-based assessment areas where it receives five percent or more of its total retail domestic deposits, based on the physical addresses of its depositors.

Banks would receive CRA credit for qualifying activities conducted in their facility-based assessment areas and deposit-based assessment areas at the assessment area level and at the bank level, consistent with the applicable performance standards discussed below. In addition, the proposal would permit banks to receive CRA credit for qualifying activities conducted outside of their assessment areas at the bank level. Under this approach, banks would still be encouraged to meet local community needs where they have branches and depositors but would be given flexibility to serve other communities with distinct needs as these activities would be considered when calculating the overall dollar value of their qualifying activities under the proposed rule. This flexible framework could reduce the number of areas where there are more banks that want to engage in CD activities than there is need for those activities (known as CD hot spots) and areas where there is a great need for CD activities but few banks that engage in those activities (known as CD deserts).

C. Providing an Objective Method To Measure CRA Activity

Consistent with the current CRA framework, the proposed rule would include different performance standards applicable to banks of different sizes. Small banks, as defined under the proposed rule, would continue to be evaluated under the small bank performance standards currently applicable to small banks that are not

[18] As discussed below, the agencies are proposing to retain for certain banks the small bank performance standards applicable to small banks that are not intermediate small banks in the current regulations. 12 CFR 25.26, 195.26; 345.26. The agencies intend for these standards to be applied consistent with the current regulations except as discussed in this notice of proposed rulemaking.

[19] *See, e.g.,* 123 Cong. Rec. 17630 (1977) (statement of Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

intermediate small banks.[20] The proposed rule also would establish new general performance standards to evaluate other banks' CRA activities and the CRA activities of small banks that opt into these standards.

The new general performance standards would assess two fundamental components of a bank's CRA performance: (1) The distribution (*i.e.,* number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies and (2) the impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits. Both components would be compared to specific benchmarks and thresholds that would be established prior to the beginning of a bank's evaluation period. Banks evaluated under the general performance standards would also be required to meet a minimum CD lending and investment requirement in each assessment area and at the bank level to achieve a satisfactory or outstanding rating.

The distribution component builds on ideas shared with the agencies by the Board that provide a quantifiable method to assess what portion of a bank's major retail lending activities are targeted to LMI individuals or in LMI areas. The impact component responds to stakeholder comments about the need for more lending and investment in areas served by CRA and provides a transparent means of evaluating those activities and setting benchmarks sufficiently high enough to incent more CRA activities.

By providing a transparent and objective way to evaluate a bank's CRA performance that banks would either be subject to or may opt into, the proposed rule would incentivize banks to engage in qualifying activities in their assessment areas and other communities with identified needs, such as distressed and underserved areas, including rural and urban areas and Indian country. Moreover, greater certainty about how engaging in specific qualifying activities would affect bank-level ratings would enable banks and other stakeholders to monitor CRA performance on an ongoing basis. It would also enable banks to target areas of need within their communities, potentially engage in more qualifying activities, and provide a positive benefit to more communities.

In addition, the proposal would preserve and standardize consideration of performance context, which would allow the agencies to recognize and account for specific facts and circumstances relating to a bank's CRA capacity and opportunities in a transparent manner.

Finally, the proposed regulations would include a strategic plan option for all banks. This option would address the unique needs of banks with business models that could not be effectively evaluated under the proposed objective framework reflected in the general performance standards or the small bank performance standards, such as banks that do not have retail domestic deposits or small banks that do not originate retail loans. Taken together, these features would appropriately differentiate banks based on their size, location, and business model.

D. Revising Data Collection, Recordkeeping, and Reporting

The proposal would require banks evaluated under the small bank performance standards to collect and maintain, but not to report, data related to their retail domestic deposits so that the agencies could validate their deposit-based assessment area delineations, as applicable. Banks evaluated under the general performance standards would be required to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, and assessment areas. Those banks would also be required to use that information to make the calculations necessary to determine their ratings, based on the application of the performance standards in the proposal. Prior to a CRA performance evaluation, the evaluating agency would validate the data used in determining a bank's ratings. The agencies would provide additional guidance on the data that banks need to collect and maintain under the proposed rule that would standardize the information collected and help banks ensure that they meet the requirements of the rule.

The agencies believe that access to the standardized information required by the proposed rule would help them to better measure, assess, and understand CRA activity across various areas and across the industry and over time. The proposal's requirements also would provide the agencies with a better, more comprehensive understanding of an individual bank's CRA activity. In addition, industry-wide reporting would enable more effective stakeholder dialogue regarding the distribution and volume of CRA activity. The agencies expect that these changes would result in timelier and more efficient CRA evaluations, which, among other things, would bring greater predictability to agency actions that consider CRA performance. Moreover, the use of the objective measures described above would allow performance evaluations to be written in standardized forms and captured in shorter narratives, which would contribute to more timely and useful public reporting.

IV. Section-by-Section Discussion

A. Qualifying Activities

Overview. Under the current regulatory framework, only certain—and relatively few—bank activities qualify for consideration in CRA performance evaluations. Whether a bank's activities qualify for consideration generally depends not only on the characteristics of the activities but also on where the activities took place. As a general matter, the types of activities that currently qualify for CRA consideration fall into two categories: (1) Retail banking activities and (2) CD activities.

Under the current framework, retail banking activities generally include (1) retail loans (*i.e.,* home mortgage loans, small business loans, small farm loans, and consumer loans) and (2) retail banking services (*i.e.,* the range of retail deposit services and credit services, branch distributions, the record of branch openings and closings, and the availability and the effectiveness of alternative delivery systems serving LMI individuals and areas). For retail lending, loan originations and purchases are considered. CD activities generally include those that finance or support (1) affordable housing for LMI individuals; (2) economic development by financing small businesses or small farms; (3) community services for LMI individuals; and (4) the revitalization or stabilization of LMI census tracts, distressed nonmetropolitan middle-income census tracts, underserved nonmetropolitan middle-income census tracts, and designated disaster areas. For CD activities, activities conducted or originated during the current evaluation period are considered. For CD investments, prior period outstanding investments are also considered. Banks also have the option of receiving consideration for retail and CD activities conducted by an affiliate, third party, or consortium. In evaluating a bank's CRA performance, the agencies assess certain factors including (1) the level of relevant retail lending activity and the geographic and borrower distribution of that retail lending activity and (2) the level, responsiveness, innovativeness, complexity, and flexibility of CD activities.

[20] The proposed rule would define a small bank as a bank that had assets of $500 million or less in each of the previous four calendar quarters.

The feedback that the agencies received on the current framework demonstrates that banks often are uncertain about whether a CD activity will qualify for CRA consideration until their supervisory agency makes a determination in a CRA evaluation, often years after the banks engaged in the activities. Feedback also revealed that many banks and other stakeholders view the process by which the agencies decide whether a CD activity qualifies for CRA credit as opaque and inconsistent from evaluation-to-evaluation, agency-to-agency, and year-to-year. In addition, stakeholders expressed that the current definition of CD can be limiting and does not capture many activities that respond to community needs, including the needs of LMI individuals and neighborhoods. These concerns create a disincentive for banks to undertake certain activities or explore new and potentially beneficial activities, even when these activities would serve the needs of LMI populations and other communities with needs. The agencies propose to address these issues in four ways.

Qualifying activities criteria. First, the proposal would clarify the activities that qualify for CRA credit. The clarifying criteria would generally apply to all banks subject to the agencies' CRA regulations. Consistent with the intent of the CRA statute, the proposed rule would define a ''qualifying activity'' as an activity that helps meet the credit needs of a bank's community, particularly those individuals, areas, and populations with needs. The proposal would also provide clearly defined qualifying activities criteria that identify the types of activities that meet the credit needs of banks' communities and, thus, would be considered qualifying activities. These criteria would both encompass the many activities that currently qualify for CRA consideration and include additional activities that meet the credit needs of economically disadvantaged individuals and areas in banks' communities.

Under the proposal, the qualifying activities criteria would include activities conducted by a bank. The agencies recognize that there are limited instances where the bank is substantively engaged in an activity, but the activity is done in the name of another party, such as an affiliate. In these situations, the bank provides the economic resources, and the agencies' current practice is to recognize these activities as being conducted by the bank, at the bank's option. Under the proposed rule, the agency would recognize activities substantively conducted by the bank. The proposed qualify activity criteria would be:

- A retail loan (defined to include home mortgage loans, small loans to businesses, small loans to farms, and consumer loans [21]) provided to:
  - An LMI individual;
  - A small business; or
  - A small farm;
- A retail loan provided in Indian country.
- A retail loan that is a small loan to a business or a small loan to a farm located in a low- or moderate-income census tract.
- A CD activity that provides financing for or supports:
  - Affordable housing that partially or primarily benefits [22] LMI individuals or families or middle-income individuals or families in high-cost areas;
  - Another bank's CD loan, CD investment, or CD service;
  - Community support services that partially or primarily serve LMI individuals or families;
  - Essential community facilities that partially or primarily benefit or serve LMI individuals or areas of identified need;
  - Essential infrastructure that benefits or serves LMI individuals or areas of identified need;
  - Family farms;
  - Government programs, projects, or initiatives that partially or primarily benefit LMI individuals (*e.g.,* a program that supports urban renewal), small businesses, small farms, and areas of identified need;
  - Financial literacy programs or education or homebuyer counseling;
  - Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;
  - Qualified opportunity funds that benefit LMI opportunity zones;
  - A Small Business Administration Certified Development Company (SBDC), Small Business Investment Company (SBIC), New Markets Venture Capital company, qualified Community Development Entity, or U.S. Department of Agriculture Rural Business Investment Company (RBIC);
  - Technical assistance and supportive services for small businesses or small farms; or
  - A capital investment, loan participation, or other venture undertaken by a bank in cooperation with a minority depository institution, women's depository institution, CDFI, or low-income credit union that helps to meet the credit needs of the institution's or credit union's local communities, including through activities that indirectly help to meet community credit needs by promoting the institution's or credit union's sustainability and profitability.[23]

Regarding CD activities, the phrase ''provides financing for or supports'' would be interpreted broadly to include all lending, investment, and service activities that are related to the CD qualifying activities criteria. For example, activities that finance the development, rehabilitation, improvement, or maintenance of affordable housing or essential community facilities, such as a public hospital that serves the entire community including the community's LMI residents, would be qualifying activities because the activities provide financing for or support the housing or hospital. The rehabilitation, improvement, or construction of affordable housing, essential community facilities, or essential infrastructure may include (1) renewable energy, energy-efficiency, or water conservation equipment or projects associated with affordable housing, essential community facilities, or essential infrastructure or (2) the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, lead pipes (such as those used in antiquated water supply systems), asbestos, mold, or radon that is present in the housing, facilities, or site where the housing or facilities are located. An activity that meets more than one of the criteria would be treated as a single qualifying activity.

Scope of qualifying activities. Second, the proposed criteria would expand the scope of the activities that qualify for CRA credit. This expansion is intended to recognize the many ways banks may meet the credit needs of their communities, particularly LMI communities, through activities that are consistent with the statutory purpose of the CRA. Under the proposal,

[21] Under the proposal, a ''consumer loan'' would be defined with reference to the Call Report and would include credit cards, other revolving credit plans, automobile loans, and other consumer loans.

[22] Under the proposal, a bank would receive credit for the full dollar value of certain CD activities that primarily benefit a specified population or area. For those CD activities that only partially benefit a specified population or area, a bank would receive *pro-rata* credit for the dollar value of the activity equal to the portion that benefited the specified population or area.

[23] For example, a cooperative venture would include donating, selling on favorable terms, or making available on a rent-free basis a branch of a bank that is in a primarily minority census tract to a minority depository institution or women's depository institution. A cooperative venture would also include a bank that is not a minority depository institution, women's depository institution, CDFI, or low-income credit union making a deposit at one of these types of institutions.

expansions to the retail lending criteria would include:

• Home mortgage loans and consumer loans provided in Indian country. The agencies received feedback from commenters on the ANPR and during outreach that emphasized the lack of access to cost-effective capital and banking services in Indian country. Providing CRA credit for home mortgage loans and consumer loans in Indian country helps to address these critical needs.

• Small loans to businesses and small loans to farms provided to (1) small businesses or small farms in census tracts of all income levels or (2) businesses or farms in LMI census tracts. The proposal would increase the size thresholds for a small loan to a business and a small loan to a farm to $2 million or less. Consistent with the current regulations' definitions of small business loan and small farm loan, the proposed definitions are based on the size of the loan to the business or farm. Loans of $2 million or less to a business or farm would be considered qualifying activities if they (1) are provided to small businesses or small farms or (2) are located in LMI census tracts. The increase would, in part, account for inflation since the $1 million loan limit for loans to small businesses and $500,000 for loans to small farms were established in 1995. The proposal would include a provision for adjusting these loan limits for inflation going forward.

The proposal would define home mortgage loans with reference to the Call Report instead of the Home Mortgage Disclosure Act (HMDA). As a result of this revision, construction loans for 1–4 family residential properties would be included as home mortgage loans. Consumer loans would also be defined with reference to the Call Report and included in all CRA evaluations. In addition, the small business and small farm revenue thresholds would be increased to $2 million in part to account for inflation since the revenue size limits were established. As with the size thresholds for a small loan to a business and a small loan to a farm, the proposal would include a provision for adjusting the revenue limits for inflation going forward.

Under the proposal, expansions to qualifying CD activities would include:

• Expanding the affordable housing criterion by clarifying that it:

○ Encompasses ''naturally occurring affordable housing'' (*e.g.,* unsubsidized rental housing with rents that are affordable to LMI individuals and families). The current regulations could be interpreted to provide consideration these types of activities; however, the regulations do not expressly include these activities as qualifying CD activities and the CRA guidance is not sufficiently clear about whether they receive CRA credit. The proposal would clarify the criteria to incentivize banks to meet the affordable housing needs of their communities through a variety of activities; and

○ Includes rental housing for low-, moderate-, and middle-income individuals in high-cost areas. The Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions & Answers) [24] explain that examiners can account for conditions in high-cost areas in banks' CRA evaluations. The proposal would clarify the criteria to incentivize banks to meet the affordable housing needs of their communities through a variety of activities including workforce housing that would allow public employees, such as teachers, police officers, and firefighters, to live close to the communities they serve.

• Adding a criterion for activities that help finance or support another bank's CD loans, CD investments, or CD services. Including this criterion and expanding the definition of CD loan and investments to include certain commitments to lend and invest, discussed below, would address the fact that community banks understand community needs best but often are unable to provide the necessary funding or service alone. In these cases, large banks may finance the project, benefitting from community banks' efforts to identify areas of need. This criterion would address stakeholders' recommendations that the CRA regulatory framework do more to encourage inter-bank collaboration and allow community banks to remain involved in projects that they identified and enabled.

• Adding a criterion for essential community facilities, such as schools and hospitals, that benefit or serve LMI individuals, LMI census tracts, or other targeted areas of need, such as distressed areas or Indian country. Under the current regulation, the Interagency Questions & Answers regarding activities that revitalize or stabilize underserved nonmetropolitan middle-income census tracts reference essential community needs, which include certain essential community facilities or infrastructure projects; however, activities that finance or support these projects may also meet other CD definitions. By adding a criterion for essential community facilities, the proposal would also clarify when these activities receive credit and incentivize banks' lending and investment activities related to these facilities.

• Adding a criterion for essential infrastructure, such as roads, mass transit, or water supply and distribution, that benefits or serves LMI individuals, LMI census tracts, or other targeted areas, such as Indian country. As discussed above, certain essential infrastructure projects may receive credit under the current CRA regulations as CD activities. The addition of the essential infrastructure criterion would acknowledge the importance of these types of projects to communities by ensuring that essential infrastructure activities receive CRA credit if they include some benefit for LMI individuals, LMI census tracts, or other areas of need (*e.g.,* an investment in a mass transit project that serves the public, including LMI individuals, would be a qualifying activity).[25] The addition also would recognize that essential infrastructure projects are often community-wide projects for which it is not feasible to allocate the benefit to specific populations or areas.

• Adding a criterion for federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit LMI individuals, small businesses, small farms, LMI census tracts, or other targeted areas of need, such as distressed or underserved areas. Although many programs, projects, or initiatives covered by this criterion would qualify under the current CD definitions, this new criterion would ensure that all activities that meet this definition receive CRA credit. As previously indicated, the agencies believe that, in many circumstances, communities are in the best position to identify their needs and design projects, programs, and initiatives that help to address those needs. This criterion would ensure that activities related to both existing and future programs that benefit certain populations and areas of need will receive CRA credit, even if the activities do not meet one of the other CD criteria, such as affordable housing. Including this criterion would reduce the circumstances in which sections or subsections of the regulations become obsolete due to the inclusion of specific

[24] The agencies have published the Interagency Questions and Answers Regarding Community Reinvestment in the **Federal Register**. 81 FR 48506 (July 25, 2016).

[25] In contrast, a loan supporting the infrastructure necessary to connect an upper-income housing development to a water main line would not meet this criterion, if there were no LMI residents in the development.

programs that expire or are repealed. For example, the CD definition in the CRA regulations previously included qualifying Neighborhood Stabilization Program (NSP)-related activities that benefit low-, moderate-, and middle-income individuals and geographies in NSP-target areas. These references have since been removed because, after March 2016, NSP-eligible activities no longer received consideration as CD activities under the CRA.

• Adding a criterion for family farm purchases or leases of farm land, equipment, and other inputs or the sale and trade of family farm products, as well as for technical assistance and supportive services. The agencies believe that this criterion would benefit communities that banks serve because a healthy farm economy supports many rural and regional economies.

• Adding a criterion for financial literacy programs or education or homebuyer counseling that benefits individuals of all income levels. The agencies believe that financial literacy is an important issue irrespective of income level. Moreover, some stakeholders expressed support for providing CRA credit for financial literacy programs for all individuals. These stakeholders cited high levels of student and credit card debt and a lack of retirement and other savings as reasons for providing broader consideration of financial literacy-related activities.

• Adding a criterion for owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country. This criterion would address concerns expressed by stakeholders about the significant housing needs in Indian country that affect individuals of all income levels.

• Adding a criterion for qualified opportunity funds, as defined in 26 U.S.C. 1400Z–2(d)(1), that benefit qualified opportunity zones in LMI tracts, as defined in 26 U.S.C. 1400Z–1(a). This criterion would incentivize banks to help meet the needs of LMI individuals and tracts located in opportunity zones, which are communities the federal government has identified as needing economic development and job creation.

• Adding CDFIs to the criterion for ventures undertaken by a bank in cooperation with a minority depository institution, women's depository institution, or low-income credit union. The proposal would include CDFIs in this criterion to recognize that the goal of these institutions is to expand economic opportunities in low-income communities by providing access to financial products and services for local residents and businesses.

In addition to these expansions, the affordable housing criterion would include activities that finance or support owner-occupied housing purchased, refinanced, or improved by LMI individuals or families, except for home mortgage loans provided directly to LMI individuals or families. This aspect of the criterion would encompass, for example, an investment provided to a non-profit that constructs or rehabilitates affordable housing for purchase by LMI individuals. In addition, this aspect of the criterion would capture mortgage-backed securities (MBS) while excluding retail home mortgage loans. Although these activities receive credit under the current regulation, this aspect of the criterion would ensure that they continue to receive credit under the more detailed qualifying activities criteria in the proposal.

Furthermore, the proposal would clarify and expand the type of activities that qualify for CRA credit through revisions to the definitions used in the qualifying activities criteria. The proposal would revise the definitions of CD loans and CD investments [26] to include commitments to lend and invest, respectively, that are reported on the Call Report, Schedule RC–L, and meet the CD activities criteria.[27]

Loan participations that have a primary purpose of CD currently qualify and would continue to qualify. To further support collaboration between large banks and community banks, the proposal would provide credit for a bank's allowance for credit losses that are reported on the Call Report, Schedule RC–G, if the bank commits to provide additional funding as required in certain contingencies. For example, a large bank would receive credit if it committed to financing potential cost overruns, the threat of which could cause the community bank to avoid the project entirely.[28] Similarly, a project may require a bank to commit funds in advance but because banks face investment limitations,[29] advance commitments, though often necessary to a project, can be restrictive, particularly for community banks. The proposal would provide credit for the dollar value of legally-binding commitments to invest that meet the CD criteria.

The proposal also would revise the definitions of distressed nonmetropolitan middle-income area and underserved nonmetropolitan middle-income area to include additional census tracts where there are unmet financial needs. Specifically, the requirement that a distressed area be a nonmetropolitan area would be removed to recognize that there may be urban areas that experience high rates of poverty, unemployment, or population loss and need financial resources. Although the agencies also considered lowering the poverty threshold in the definition of distressed area to as low as 15 percent, they decided to retain the 20 percent threshold because it is consistent with the threshold used in some other Federal programs that are intended to benefit low-income communities, such as the New Markets Tax Credit program. The proposal also would revise the definition of underserved area to remove the requirement that these census tracts be nonmetropolitan areas; this change would address urban banking deserts that lack access to financial services. Under the proposal, an underserved area would be a census tract with:

• A population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs; or

• a census tract that does not have a bank branch in the tract and does not have a bank branch within:

○ Two miles of the center of the census tract if it contains only urban census blocks;

○ five miles of the center of the census tract if it contains urban and rural census blocks;

○ ten miles of the center of the census tract if it contains only rural census blocks; or

○ five miles of the center of the census tract if it is an island area, as defined by the Federal Financial Institutions Examination Council (FFIEC) Census data.

Due to the lack of banking and other services in underserved areas, the agencies believe that the CRA regulations should incentivize banks to meet the retail lending and CD needs of the residents in these geographies.

In addition, under the proposal, the CRA regulations would no longer require that CD services be related to the

[26] The proposal would replace the term ''qualified investment'' in the current regulation with the term ''CD investment.''

[27] The Call Report, Schedule RC–L, covers contingent and legally binding commitments to lend and invest, respectively.

[28] Banks would continue to receive CRA credit for the funded portions of lines of credit but generally would not receive CRA credit for other legally-binding commitments to lend, such as revolving credit lines and letters of credit.

[29] *See, e.g.,* 12 CFR part 24.

provision of financial services (*i.e.,* banks would receive credit for all volunteer hours, including manual labor, provided to a CD project). This expansion recognizes that support for a CD project may take many forms, all of which are required for the project to meet the needs of a community, and that all these forms of support should qualify for CRA credit, consistent with the goals of CRA. Under the proposed general performance standards, all activities conducted by the bank—including those engaged in by another party, such as an affiliate—would be considered, as opposed to at a bank's option as is done under the current framework. Banks evaluated under the small bank performance standards would continue to have the option of requesting consideration for these qualifying activities.

The proposal also would expand the circumstances in which banks receive *pro-rata* credit for qualifying activities. Under the current regulations, banks receive credit for the *pro-rata* share of a loan or investment in mixed-income housing that includes a set-aside required by Federal, state, or local government for affordable housing for LMI individuals. Under the proposal, all CD activities that provide some benefit to, but do not primarily benefit, specified populations, entities, or areas would receive *pro-rata* credit equal to the partial benefit provided. This change recognizes that 100 percent of the portion of an activity that benefits LMI individuals and families, small businesses, small farms, or identified geographies would meet the CD criteria in the proposal (*i.e.,* a bank would receive credit for 40 percent of the dollar value of a grant that supports a non-profit organization which provides after care and activities to a school where 40 percent of the students are eligible for free or reduced price school lunches).

Further, as stated above, the intended effect of the proposal is to expand the type of activities that qualify for CRA credit. Although the agencies chose not to include in the proposal certain ambiguous or unclear terms used in the current regulations, the agencies do not intend to reduce the activities that qualify for CRA credit. For example, the qualifying activities criteria would no longer use the current regulatory phrase ''revitalize and stabilize'' to describe the activities that would qualify in targeted areas, such as distressed or underserved areas; instead, the proposal describes in greater detail the criteria for activities that would qualify in these locations. Similarly, rather than including the term ''economic development,'' the proposal employs more detailed CD criteria to capture the type of activities that currently qualify as economic development activities, such as activities that finance (1) SBDCs, SBICs, New Markets Venture Capital companies, qualified Community Development Entities, or RBICs; (2) businesses or farms that meet the size-eligibility standards of the SBDC or SBIC by providing technical assistance and supportive services; or (3) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit small businesses, or small farms. The proposal does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test [30] support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments. This aspect of the economic development component of the current CD definition was not retained because the agencies could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs.

Focus on ongoing commitment. Third, the proposal seeks to address the concern that the current framework gives too much CRA credit to certain activities, such as credit for the full value of frequently traded MBS, regardless of how long they remain on a bank's balance sheet and even when they do not result in new qualifying activities. The proposal would ensure that a bank's balance sheet reflects its ongoing commitment to CRA. To accomplish this goal, the proposal would give a bank CRA credit for the average month-end outstanding amount on a bank's balance sheet (on-balance sheet) of any qualifying loan or CD investment. The proposal would credit the bank for the amount of CD services and monetary and in-kind donations made during the period. This approach would help to eliminate the apparent inflation of the level of a bank's CRA activity that results from banks purchasing loans or investments just prior to a CRA evaluation and then selling those loans and investments when the evaluation is complete.

Qualifying activities list. Finally, the proposal provides that the agencies would maintain a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet the criteria in the rule, as well as examples of activities that the agencies have determined, in response to specific inquiries, do not qualify. The proposal would also establish a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity.[31]

The illustrative list generally would be updated each time an activity is confirmed to be or determined not to be a qualifying activity; however, depending on the circumstances, an activity may not be added to the list (*e.g.,* if it presents circumstances unique to the requesting bank or would be duplicative of an activity already on the list). If it is determined that an activity would not be added to the list, this determination would be made available to the public. The agencies anticipate that banks would use this qualifying activities confirmation process sparingly and that it would not replace a bank's ability to discuss whether an activity qualifies with its examiners or making its own determination, by applying the proposed qualifying activities criteria, that an activity qualifies for CRA credit. Banks would not be required to obtain confirmation from its appropriate Federal regulatory agency for each CRA activity, and qualifying activities would not be limited to those on the illustrative list.

In addition to updating the illustrative list on an ongoing basis, the proposal provides that the list would also be revised at least every three years, through a public notice and comment process, to add activities that meet the criteria and to remove activities that no longer meet the criteria (*e.g.,* if broadband were universally available and no longer considered to be essential infrastructure). If it were determined that an activity no longer meets the criteria, a bank with that activity on-balance sheet would continue to receive

[30] Under the current regulations, as interpreted in the Interagency Questions & Answers, a business or farm meets the size test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the SBDC or SBIC programs or have gross annual revenues of $1 million or less. *See* Interagency Questions and Answers, Q&A __.12(g)(3)–1, 81 FR 48506, (July 25, 2016).

[31] The agencies expect to treat the information provided to them through this process as nonpublic and to maintain the confidentiality of that information subject to applicable law. Banks and interested parties may designate information as confidential or request confidential treatment. The OCC will treat confidential commercial information submitted to the agency in accordance with 12 CFR 4.16. The FDIC will treat confidential commercial information submitted to the agency in accordance with 12 CFR 309.6.

credit if the obligation remains on-balance sheet; however, that activity would not be considered a qualifying activity for any subsequent purchasers. The agencies would consult and coordinate with each other on the content of the proposed list. The initial proposed illustrative list is available for review on the agencies' websites and in section V of this proposal.

Summary of objectives. Together, the proposed rule's qualifying activities provisions are intended to provide certainty and transparency about whether an activity qualifies for CRA credit prior to a bank engaging in the activity, and to ensure consistent treatment of activities across and within the agencies. By increasing the specificity used to describe qualifying activities and predictability about whether specific activities would count, these proposed provisions are also intended to encourage banks to undertake more CRA activities—including novel, complex, and innovative activities—that help meet local community needs. In particular, the qualifying activities provisions would incentivize banks to commit more financial resources to the populations and areas that need them most, such as LMI individuals, distressed areas, underserved areas, and Indian country. The agencies expect that banks would only conduct qualifying activities that are consistent with safe and sound banking practices.

Calculating the qualifying activities value. The current framework includes a qualitative and quantitative assessment of the dollar value and number of CRA activities, but it does not set a threshold for the total dollar volume of CRA activities in evaluating CRA performance nor does it provide a uniform method for assessing banks' performance context. Under the proposal, banks evaluated under the general performance standards would determine their presumptive ratings at the bank level and in each assessment area by first calculating their *qualifying activities values,* which are the sum of the quantified dollar value of qualifying activities that receive credit (after being adjusted by multipliers, as explained below). Qualifying activities would be quantified as follows:

- Qualifying loans and CD investments would be valued based on their average month-end on-balance sheet dollar value, except that qualifying retail loans originated and sold within 90 days of their origination date would be valued at 25 percent of their origination value.
- Legally-binding commitments to invest that are reported on the Call Report, Schedule RC–L, would be valued based on their average month-end dollar value.
- Qualifying commitments to lend would be valued based on the average month-end dollar value of the allowance for credit losses on those commitments that are reported on the Call Report, Schedule RC–G.
- CD services and monetary or in-kind donations would be credited at the value of the monetary donation or in-kind activity or at the hourly salary as estimated by the Bureau of Labor Statistics for the job category of the service provided for the number of hours provided.

If a CD activity partially benefits the intended population or area, then the quantified value would be a *pro-rata* share of the full quantified dollar value of the activity, as described above, equal to the percentage of partial benefit.

The quantified value of qualifying activities to CDFIs, other CD investments (not including MBS and municipal bonds), and other affordable-housing related CD loans would be adjusted upward by a multiple of two to provide an incentive for banks to engage in these activities. In addition to these activities, the agencies are also considering whether to apply multipliers to smaller CD loans, such as two, which may be particularly important to small non-profits with a CD purpose.

A bank would calculate its bank-level and assessment area qualifying activities values by taking the sum of the quantified values of all qualifying activities, adjusted by any applicable multiplier, as follows:

$$\begin{array}{c}\textbf{\textit{Qualifying Loans}}\\ \textit{on balance sheet}\\ \textit{for at least } 90 \textit{ days and } \textbf{\textit{CD Investments}}\end{array} + \begin{array}{c}\textit{Twenty five percent of the origination value of}\\ \textbf{\textit{Qualifying Loans}} \textit{ sold within}\\ 90 \textit{ days of origination}\end{array} + \begin{array}{c}\textbf{\textit{CD Services}} \textit{ and } \textbf{\textit{Monetary}}\\ \textit{and } \textbf{\textit{In-kind donations}}\end{array}$$

Although banks would still be able to make large investments in MBS under the proposal, concerns related to frequent trading of MBS under the current regulations are mitigated because banks evaluated under the proposed general performance standards would only receive credit in the calculation of their CRA evaluation measure, described below, for the dollar value of MBS for the period that the investment remains on-balance sheet. For example, if a bank purchased a qualifying MBS on January 1, 2019 and sold the MBS on February 1, 2019, the bank would receive one twelfth of the value of the MBS when it calculated its annual qualifying activities value.

Alternatives considered. The agencies considered additional ways to expand credit for retail lending and CD activities to individuals who, although not designated as low- or moderate-income, nonetheless have objectively low incomes. These included providing CRA credit for retail loans and CD activities to middle-income individuals in (1) distressed areas; (2) underserved areas; (3) persistent poverty counties, which have a poverty rate of 20 percent or more over the last 30 years; and (4) any census tract where the area median income is less than the national median income. To retain the focus on LMI individuals, however, the proposal does not include these revisions.

The agencies also considered limiting the dollar value that any single transaction could contribute to the qualifying activities value to address concerns that measuring performance based on the dollar value of banks' qualifying activities could incentivize banks to engage in a small number of large dollar activities that may be less responsive to community needs than other activities. Because the proposal assesses the performance of banks that are subject to the general performance standards by considering the distribution of retail lending activities and the dollar value of qualifying activities, as discussed below, the agencies do not believe that a single transaction limit is necessary. Moreover, a single transaction limit could have unintended consequences and discourage banks from conducting activities that would help meet the needs of a specific community. For example, competition and capacity constraints may limit the number and type of qualifying activities available to a bank.

The agencies invite comment on all aspects of the proposal related to establishing clear criteria for the type of activities that would qualify for CRA credit and determining the dollar value of qualifying activities, including with respect to the following questions:

1. Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve?

2. Are there other criteria for determining which activities would qualify for CRA credit that the agencies should consider?

3. Under the proposal, CD activities conducted in targeted areas, such as Indian country or distressed areas, would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas? If so, what should those criteria be?

4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to $2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?

5. The agencies plan to publish the illustrative list on their websites and to update the list both on an ongoing basis and through a notice and comment process. Should the list instead be published as an Appendix to the final rule or be otherwise published in the ***Federal Register****? In addition, how often should the list be updated?*

6. The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. The agencies considered an alternative process where an agency would accept all requests from banks for confirmation that an activity is a qualifying activity, aggregate these requests, publish the list of requested items in the ***Federal Register*** *for public comment and feedback, and update the list following this process once every six months. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?*

7. Are certain types of retail loans more valuable to LMI individuals and geographies than other types? If so, which types? Should the regulations recognize those differences? If so, how? For example, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?

8. The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied)?

9. The proposal quantifies the value of CD services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Alternatively, CD services could be valued based on a standardized compensation value for the banking industry or occupation type. For example, the median hourly compensation value for the banking industry is approximately $36, when calculated using Bureau of Labor Statistics data. Would using standardized compensation values reduce the burden associated with tracking CD services while still appropriately valuing CD services? If so, how should the agencies establish the standardized compensation values?

10. Should the range of retail banking services provided—such as checking accounts, savings accounts, and certificates of deposit—be considered under this proposal? If so, how could retail banking services be quantified? For example, could the types of checking and savings accounts that are offered by a bank (e.g., no fee, fixed fee, low interest-bearing, high interest-bearing) be considered in performance context?

B. Assessment Areas

Under the current framework, a bank's CRA performance is measured within the bank's assessment areas or the greater statewide or regional area(s) that includes the bank's assessment areas. With limited exceptions, a bank is required to delineate assessment areas consisting of one metropolitan statistical area (MSA), one or more metropolitan divisions (MD), or one or more contiguous political subdivisions (*e.g.,* counties, cities, or towns). Assessment areas must include any census tract where a bank has its main office and any census tract where it has one or more branches or deposit-taking automated teller machines (ATMs), as well as the surrounding census tracts in which the bank has originated or purchased a substantial portion of its loans. A bank may adjust the boundaries of an assessment area to include only the portion of a political subdivision that it reasonably can be expected to serve. Finally, an assessment area must consist only of whole census tracts and not reflect illegal discrimination, arbitrarily exclude LMI census tracts, or extend substantially beyond an MSA or state boundary unless the assessment area is in a multistate MSA (MMSA).

Wholesale banks, which are banks without retail customers (*e.g.,* home mortgage and small business customers), and limited purpose banks, which are banks that offer limited products (*e.g.,* credit cards or automobile loans), have these same rules for delineating assessment areas, except that their assessment area delineations only include the MSAs, MDs, or whole political subdivisions that contain these banks' main office, branches, and deposit-taking ATMs. Military banks, whose business predominately consists of serving the needs of military personnel or their dependents, are not required to have geographic assessment areas and may delineate their entire deposit customer base as their assessment area.

The current method for delineating a bank's assessment areas, which is focused on the areas surrounding brick-and-mortar bank locations, is challenged by how today's consumers meet their banking needs and banks provide services. The current approach creates disincentives for banks to meet the needs of their *entire* communities or even their own customers if their communities or customers are located outside of the banks' assessment areas. These disincentives serve to create CRA deserts and promote CRA hotspots.

To address this, the proposed rule would establish a modernized and standardized process for identifying where a bank's qualifying activities receive credit that would apply to banks subject to the agencies' CRA regulations. Under the proposal, banks (except for military banks) [32] would be required to serve the communities where they have a physical presence and would also be required to serve the surrounding geographies where they originated or purchased a substantial portion of their loans (consistent with the current rules). In addition, to recognize changes in the banking industry—including the increasing number of banks that operate primarily through the internet or

[32] The proposal would retain the requirement that a military bank be evaluated based on its entire deposit customer base, regardless of geographic location.

otherwise serve customers located far from the banks' physical locations—and the statutory purpose of the CRA to help ensure that banks reinvest in the communities where they collect deposits,[33] the proposal would also require a bank with a significant portion of its retail domestic deposits outside of its facility-based assessment areas, such as 50 percent or more, to delineate additional assessment areas wherever it has a concentration of retail domestic deposits.

Regarding assessment areas based on physical presence, a bank would delineate a ''facility-based'' assessment area where it has its main office, a branch, or a deposit-taking facility, as well as any surrounding geographies where the bank has originated or purchased a substantial portion of its loans. The proposal would require a bank to delineate these facility-based assessment areas in any of the following areas: (1) An MSA; (2) the whole nonmetropolitan area of a state; (3) one or more whole, contiguous MDs in a single MSA; or (4) one or more whole contiguous counties or county equivalents in a single MSA or non-MSA area. The agencies would provide banks the option to choose the geographic level at which to delineate their facility-based assessment areas because the agencies believe that banks are in the best position to determine the areas that their facilities serve.

Beyond their brick-and-mortar locations, the proposal would require banks that receive more than 50 percent of their retail domestic deposits from outside of their facility-based assessment areas to delineate separate, non-overlapping ''deposit-based'' assessment areas in the smallest geography where they receive five percent or more of their retail domestic deposits. These deposit-based assessment areas would capture banks' evolving business models, address the increasing competition for deposits outside of banks' current assessment areas, and encourage banks to serve their entire communities—including where they take deposits—in harmony with the CRA statute. These deposit-based assessment areas would consist of (1) a state; (2) a whole MSA; (3) the whole nonmetropolitan area of a state; (4) one or more whole, contiguous MDs in a single MSA; (5) the remaining geographic area of a state, MSA, nonmetropolitan area, or MD other than where it has a facility-based assessment area; or (6) one or more whole, contiguous counties or county equivalents in a single MSA or non-MSA. Unlike facility-based assessment areas where banks may choose the geographic level where they delineate their assessment areas, the agencies believe that banks should be required to delineate deposit-based assessment areas at the smallest geographic level where they receive five percent or more of their retail domestic deposits to help ensure that banks' deposit-based assessment area ratings reflect their qualifying activities in the same areas as their concentrations of deposits. For example, if a bank receives 60 percent of its retail domestic deposits from outside of its facility-based assessment area and 5 percent of these deposits come from Cook County, Illinois, which is not in a facility-based assessment area, it must delineate Cook County as a deposit-based assessment area.

In addition, the agencies recognize that there are certain communities of need where banks have a limited physical or deposit-taking presence. To help ensure that these areas are served, the proposed rule would allow banks to receive credit for qualifying activities conducted outside of their assessment areas in determining their bank-level ratings.

The proposal would allow a bank to change its assessment area delineation once during each evaluation period and would no longer permit a bank to adjust an assessment area's boundaries to include only the portion of a political subdivision that it reasonably can be expected to serve. The proposal would, however, retain the requirements that a bank's assessment areas must not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies.

Summary of objectives. Taken together, the proposal's assessment area provisions would create an affirmative obligation for banks to conduct CRA activity in the communities where they operate (determined by where they have a physical presence), conduct a substantial portion of their lending, or collect a substantial portion of their deposits. Through these changes, the proposed rule would both (1) preserve the important connection between a bank's physical locations and the surrounding community by addressing the CRA obligations of traditional banks, which engage in most of their business at their physical locations and (2) reflect critical changes to how customers bank in the 21st century by considering the activity of nontraditional banks, including internet banks. In addition, allowing banks to receive credit for CRA activities outside of their assessment areas when determining bank-level ratings would help to eliminate CRA hot spots and banking deserts and incentivize investment and lending to all communities served by the bank.

Alternatives Considered. In developing this proposed rule, the agencies considered alternative approaches for delineating assessment areas where banks conduct a significant amount of business outside of their physical locations. For example, the agencies considered requiring banks to delineate additional assessment areas only where they have a concentration of deposits. The agencies also considered adopting a hybrid approach that would have required delineation of assessment areas where banks derive a significant concentration of deposits and conduct a significant amount of lending. Because a deposit-based approach closely aligns with the CRA statute—to address the harm caused by banks taking deposits from certain communities and investing them elsewhere—the proposal includes the approach based on deposits.[34] However, to maintain consistency with the current framework and recognize the importance of evaluating a bank's lending in the areas surrounding its facilities where it has originated or purchased a substantial portion of its retail lending, the proposal also would require a bank to delineate a facility-based assessment area around areas where it has a main office, a branch, or a deposit-taking facility *as well as* the surrounding areas where it has originated or purchased a substantial portion of its retail lending.

Regarding the assessment area thresholds, the proposed rule requires banks that receive 50 percent or more of their retail domestic deposits from outside of their facility-based assessment areas to delineate deposit-based assessment areas where they receive five percent or more of their retail domestic deposits. The agencies are considering a range around those thresholds; specifically, the agencies are considering a range between 40 and 60 percent for the percentage of retail domestic deposits outside of banks' facilities-based assessment areas and between two and eight percent for the percentage that determines where banks would delineate their deposit-based assessment areas.

[33] *See, e.g.,* 123 Cong. Rec. 17630 (1977).

[34] *See, e.g.,* 123 Cong. Rec. 17630 (1977) (statement of Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs) (''I am talking about the fact that banks . . . will take their deposits from a community and instead of reinvesting them in that community . . . they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.'')

The agencies invite comment on all aspects of the proposal related to establishing a modernized and standardized process for identifying a bank's community—*i.e.,* assessment area(s)—in which the bank's qualifying activities receive credit, including with respect to the following questions:

11. Are the proposed methods for delineating assessment areas clear, simple, and transparent?

12. The proposal would allow banks to choose how broadly to delineate their facility-based assessment areas, but it would require banks with a significant portion, such as 50 percent or more, of their retail domestic deposits outside of their facility-based assessment areas to delineate their deposit-based assessment areas at the smallest geographic area where they receive five percent or more of their retail domestic deposits. The requirement to designate deposit-based assessment areas would impact internet banks that do not rely on branches or ATM facilities to collect deposits as well as traditional banks that, in addition to their branches and ATM facilities, collect a significant portion of their deposits online outside of their branch and ATM footprint. Do these approaches strike the right balance between allowing flexibility and ensuring that banks serve their communities? If not 50 percent, what threshold should be used to determine if a bank has a significant portion of its deposits outside of its facility-based assessment areas and why? In addition, is receiving at least five percent of domestic retail deposits from a given area the appropriate threshold for requiring a bank to delineate a deposit-based assessment in that area, or should some other threshold be implemented? If so, why?

13. The deposit-based assessment area delineation requirements are intended to ensure that banks serve the communities in which they operate. However, under the proposed regulation, it is possible that few banks would be required to delineate a deposit-based assessment area in less populous areas or states, despite having a significant market share in those areas (although banks with branches in those areas would be required to delineate facility-based assessment areas and banks may receive credit for qualifying activities outside of their assessment areas conducted in these areas or states). Does this framework provide sufficient incentives for banks to conduct qualifying activities in these less populous areas? Alternatively, should banks be required to delineate separate, non-overlapping assessment areas in each state, MSA, MD, or county or county equivalent in which they have at least a certain percentage of the deposit market share—regardless of what percentage of the bank's retail domestic deposits are derived from a given area—and, if so, what should the percentage of the deposit market share be?

C. Objective Method To Measure CRA Performance

Overview. The current CRA regulations provide different methods to evaluate a bank's CRA performance depending on the bank's asset size and business strategy. For each type of bank, the agencies evaluate all or a portion of its retail and CD activities. For example, in 2019, banks with less than $321 million in assets in either of the two prior calendar years were evaluated under a retail lending test, and various types of CD activities also may be considered. For banks evaluated in 2019 with $1.284 billion or more in assets in 2017 or 2018, all CD lending and investments and all retail and CD services are evaluated. Based on the agency's evaluation of the bank's relevant qualifying activities, its performance context, and evidence of discriminatory and other illegal credit practices, a bank receives a rating of outstanding, satisfactory, needs to improve, or substantial noncompliance.

Because of the subjective nature of the current framework, exactly how an agency determines the appropriate rating is at times opaque, complex, and inconsistent. Although the current framework describes in general terms the parameters that an agency uses to weigh and score a bank's relevant qualifying activities, important terms in the parameters are undefined and the processes are unspecified. For example, the agencies are required to assess the geographic distributions of loans. For banks other than small banks and intermediate small banks, as those terms are defined under the current regulations, an ''excellent'' geographic distribution correlates with an ''outstanding'' rating, and a ''good'' distribution correlates with a ''satisfactory'' rating—but both ''excellent'' and ''good'' are undefined. Similarly, under the current regulations, the undefined term ''reasonable geographic distribution'' equates to satisfactory performance for small banks and intermediate small banks. Furthermore, there is no stated quantity of CRA activities that correlates to a particular rating category. With respect to qualifying services, the current framework does not quantify their value, and the agencies undertake a qualitative analysis of the range of such services.

To achieve the goal of providing a method of assessing CRA performance that would be more objective, clear, and consistent and facilitate banks' ability to engage in qualifying activities in communities that need it the most, the proposed rule would establish new general performance standards used to evaluate banks that are not small banks. The proposal would allow small banks to opt into the general performance standards as described below; those that do not opt in would be evaluated under small bank performance standards consistent with the current regulations. The new general performance standards would evaluate banks' CRA activities by assessing two fundamental components: (1) The appropriate distribution (*i.e.,* number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies in a community and (2) the impact (*i.e.,* quantified value) of a bank's qualifying activities.

To ensure that the distribution of the number of CRA retail loans and the total value of qualifying activities would be captured and assessed, the proposed rule would provide that the ratings for a bank evaluated under the general performance standards would be based on a combination of approaches. Specifically, to receive a presumptive rating of satisfactory or outstanding at the assessment area level, (1) banks would be required to meet the minimum thresholds for performance on the applicable retail lending distribution tests in that assessment area for each major retail lending product line with at least 20 loans in that assessment area and (2) the average of banks' CRA evaluation measures (described in more detail below) for an evaluation period would have to meet the associated empirical benchmark. By only evaluating a bank's distribution of retail loans in areas where the bank has at least 20 loans in a major retail lending product line, this approach would be tailored to a bank's business strategy and product offerings at the bank and assessment area level.

At the bank level, a bank's presumptive rating would be based on the comparison of its average bank-level CRA evaluation measure to the established empirical benchmark, except that a bank could not receive a satisfactory or an outstanding unless it also received that rating in a significant portion, such as more than 50 percent, of its assessment areas and in those assessment areas where it holds a significant amount of deposits, such as more than 50 percent. At both the bank

and assessment area level, banks evaluated under the general performance standards would also be required to meet minimum CD lending and investment requirements to achieve a satisfactory or outstanding rating. This method of evaluation would incentivize banks to increase the dollar volume of their CRA activities, ensure that banks that are retail lenders are distributing their retail loans to LMI individuals, small farms, small businesses, and farms and business in LMI communities, and recognize the importance of CD lending and investments to LMI individuals and communities.

The proposal would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC–E, item 1, of the Call Report, but exclude brokered deposits. This proposed definition would exclude municipal deposits and deposits from foreign governments or entities and thus would be more reflective of a bank's capacity to engage in CRA-qualifying activities. By further excluding brokered deposits, which are not associated with any individual or community, this definition would refine the Call Report definition to more accurately reflect the deposits a bank collects from identifiable individuals and communities. Additionally, this definition would leverage an existing Call Report definition of deposits to lessen associated data collection, recordkeeping, and reporting burdens.

Under this proposal, for a bank evaluated under the general performance standards to meet the outstanding or satisfactory presumptive rating categories in an assessment area: (1) Its performance on the geographic and borrower lending distribution tests would have to meet or exceed the established thresholds for performance for each of its major retail lending product lines with at least 20 loans in that assessment area and (2) the average of its annual assessment area CRA evaluation measures would have to meet or exceed the established benchmarks.

The chart below illustrates possible ways to achieve each presumptive ratings category associated with the statutory rating categories in a given assessment area. The agencies included specific empirical benchmarks for each rating category in the proposed rule that they believe would help achieve the positive outcomes intended by this rulemaking (*i.e.,* an empirical benchmark of (1) 11 percent for outstanding, (2) six percent for satisfactory, (3) three percent for needs to improve, and (4) less than three percent for substantial noncompliance). The agencies selected the specific empirical benchmarks from within ranges for each rating category that reflect the agencies' analysis of the available lending and investment data, discussed below.

CRA evaluation	Retail lending distribution tests	CD minimums	Presumptive rating category
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 11 percent (selected from a range of 10 to 15 percent).	A bank meets the established thresholds for all the retail lending distribution tests for its major retail lending product lines in that assessment area.	The quantified value of community development loans and community development investments in the assessment area, *divided by* the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.	Outstanding.
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 6 percent (selected from a range of 5 to 10 percent).	A bank meets the established thresholds for all the retail lending distribution tests for its major retail lending product lines in that assessment area.	The quantified value of community development loans and community development investments in the assessment area, *divided by* the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.	Satisfactory.
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 3 percent (selected from a range of 2 to 5 percent).			Needs Improvement.
The average of a bank's annual assessment area CRA evaluation measures is less than 3 percent (selected from a range of 0 to 5 percent).			Substantial Non-compliance.

The bank-level presumptive rating under the general performance standards would be determined by comparing the average of a bank's average bank-level annual CRA evaluation measures to the established empirical benchmarks for the statutory rating categories and determining if the bank had a satisfactory or outstanding in a significant portion, such as more than 50 percent, of its assessment areas, and in those assessment areas where it holds a significant amount of deposits, such as more than 50 percent. In addition, the bank would be required to meet the minimum requirements for CD lending and investment at the bank level.

As discussed below, the proposed rule would establish empirical benchmarks for the average of a bank's annual CRA evaluation measures for each rating category and the thresholds for the retail lending distribution tests. A bank would use the empirical benchmarks and thresholds in effect on the first day of its evaluation period for the duration of its evaluation period. Because the proposed evaluation method would be sufficiently flexible to account for different bank sizes and business models, it would not include different tests for different types and sizes of banks.

The proposal identifies the rating resulting from the comparison of the bank's CRA evaluation measure to the corresponding empirical benchmarks and geographic and borrower distribution tests as ''presumptive'' because this rating could be adjusted based on consideration of performance context and discriminatory or other illegal credit practices. These possible adjustments are discussed below. Following any adjustments, the agency

would determine a bank's assigned rating in each of its assessment areas and at the bank level.

Twelve U.S.C. 2906(d) of the CRA statute requires the agencies to provide a written evaluation, including a rating, for banks with interstate branches at the state level, MMSA level, or both, as applicable. The content of that written evaluation must (1) state conclusions for each assessment factor (*i.e.,* the small bank performance standards for small banks and the borrower and geographic distribution tests, CRA evaluation measure comparison, and CD minimums for banks subject to the general performance standards); (2) discuss the facts and data supporting conclusions; and (3) contain the rating and a statement describing the basis for the rating.[35] For these banks, the state or MMSA level rating is the lowest rating assigned to a significant number of its assessment areas within that state or MMSA.

Section 2906(b)(1)(B) of the CRA statute also requires the agencies to conclude, but not rate, at the MSA and nonmetropolitan area level. Under this proposal, the agencies' conclusion at these levels would be the lowest rating assigned to a substantial portion of assessment areas in that MSA or nonmetropolitan area.

Applying the retail lending distribution tests. The retail lending distribution tests would apply to banks evaluated under the general performance standards. The retail lending distribution tests would be applied at the assessment area level to a bank's major retail lending product lines with at least 20 originations in the assessment area during the evaluation period. A major retail lending product line is defined at the bank level and is any retail lending product line that composes at least 15 percent of the bank's overall dollar volume of retail loan originations during the evaluation period. The agencies would require at least 20 originations in an assessment area before applying a retail lending distribution test to ensure that the rule only evaluates a bank's retail lending distribution in markets where it is engaged in retail lending beyond lending done on an accommodation basis. Under the proposal, banks would apply the retail lending distribution tests, and the agencies would validate their performance.

The retail lending distribution tests would evaluate the bank's originations in each assessment area during the review period using both a geographic distribution test and a borrower distribution test for small loans to businesses and small loans to farms and a borrower distribution test for home mortgage and consumer lending. The geographic distribution test assesses a bank's distribution of lending in LMI areas while the borrower distribution test assesses a bank's distribution of lending to LMI borrowers or small businesses or small farms. A bank can pass either test by meeting or exceeding a threshold associated with the demographic comparator, which is based on the demographics of the given assessment area, or a threshold associated with the peer comparator, which is based on peers' performance in the given assessment area.

Although the agencies remain committed to encouraging banks to meet the credit needs in LMI areas, for banks evaluated under the general performance standards, the proposal would not apply a geographic distribution test to a bank's consumer and home mortgage product lines. Under the geographic distribution test in the current CRA framework, banks receive positive consideration for home mortgage and consumer loans made in LMI areas, even if they are made to middle- or upper-income individuals or families. Unlike small loans to businesses and small loans to farms in LMI areas that may result in additional job creation or other positive effects for the larger community, home mortgage and consumer loans to middle- or upper-income individuals and families in LMI areas are generally not as beneficial to LMI communities and may result in displacement. Accordingly, this proposal would not apply the geographic distribution test to these banks' home mortgage and consumer product lines. The result of this is that under the proposal, a mortgage loan to a high-income individual living in a low-income census tract would no longer qualify for CRA credit. The agencies' commitment to encouraging banks to meet the credit needs in LMI communities and neighborhoods is reflected in the proposal's retention of the geographic distribution test for small business and small farm product lines. However, because the agencies would apply the small bank performance standards consistent with the current regulations, small banks would continue to be evaluated based on the geographic distribution of their home mortgage loans and consumer loans, as applicable.

Under the proposal, a bank subject to the retail lending distribution tests would not be able to achieve a presumptive rating of satisfactory or outstanding without passing all applicable distribution tests for all major retail lending product lines in that assessment area. To pass a distribution test, a bank would have to meet or exceed the minimum thresholds for either the demographic comparator or the peer comparator. For example, if the threshold for the demographic comparator is set at 55 percent of the relevant demographic comparator and the threshold for the peer comparator is set at 65 percent of the relevant peer comparator, a bank would be required to meet either the 55 percent demographic comparator threshold or the 65 percent peer comparator threshold to pass the distribution test. In other words, to pass the geographic distribution test using the demographic comparator, the percentage of a bank's small loans to businesses (SLB) that are in LMI census tracts in the assessment area (AA) *divided by* the percentage of businesses in LMI census tracts in the assessment area would have to be *greater than* or *equal to* 55 percent, which would be calculated as follows:

[35] The CRA statute provides:

States: For a bank that maintains domestic branches in 2 or more states, the appropriate Federal financial supervisory agency must prepare—(A) a written evaluation of the entire bank's record of CRA performance, as required by subsections (a), (b), and (c) of 12 U.S.C. 2906 and (B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the bank's record of CRA performance within such state, as required by subsections (a), (b), and (c) of 12 U.S.C. 2906. *See* 12 U.S.C. 2906(d)(1).

MMSAs: For a bank that maintains domestic branches in 2 or more states within an MMSA, the appropriate Federal financial supervisory agency must prepare a separate written evaluation of the bank's record of CRA performance within such MMSA, as required by subsections (a), (b), and (c) of 12 U.S.C. 2906. *See* 12 U.S.C. 2906(d)(2).

$$\frac{\#\ of\ Bank\ SLBs\ \ in\ LMI\ census\ tracts\ in\ AA/\#\ of\ Bank\ SLBs\ in\ AA}{\#\ of\ businesses\ in\ LMI\ census\ tracts\ in\ AA/\#\ of\ businesses\ in\ AA} \geq 55\ \%$$

Alternatively, to pass the geographic distribution test using the peer comparator, the percentage of a bank's small loans to businesses that are in LMI census tracts in the assessment area *divided by* the percentage of all banks' small loans to businesses in LMI census tracts in the assessment area would have to be *greater than* or *equal to* 65 percent, calculated as follows:

$$\frac{\#\ ofBank\ SLBs\ in\ LMI\ census\ tracts\ in\ AA/\#\ of\ Bank\ SLBs\ in\ AA}{\#\ of\ all\ banks'\ SLBs\ in\ LMI\ census\ tracts\ in\ AA/\#\ \ of\ all\ banks'\ SLBs\ in\ AA} \geq 65\ \%$$

To pass the borrower distribution test by using the demographic comparator, the percentage of a bank's small loans to businesses made to small businesses in the assessment area *divided by* the percentage of small businesses in the assessment area would have to be *greater than* or *equal to* 55 percent, calculated as follows:

$$\frac{\#\ of\ Bank\ SLBs\ made\ to\ SBs\ in\ AA/\#\ of\ Bank\ SLBs\ in\ AA}{\#\ of\ SBs\ in\ AA/\#\ of\ businesses\ in\ AA} \geq 55\ \%$$

Alternatively, to pass the borrower distribution test by using the peer comparator the percentage of a bank's small loans to businesses made to small businesses in the assessment area *divided by* the percentage of all banks' small loans to businesses made to small businesses in the assessment area would have to be *greater than* or *equal to* 65 percent, calculated as follows:

$$\frac{\#\ ofBank\ SLBs\ made\ to\ SBs\ in\ AA/\#\ of\ Bank\ SLBs\ in\ AA}{\#\ of\ all\ banks'\ SLBs\ made\ to\ SBs\ in\ AA/\#\ \ of\ all\ banks'\ SLBs\ in\ AA} \geq 65\ \%$$

The agencies would collect and provide public data that would allow banks to apply the borrower distribution tests for home mortgage and consumer loans, small loans to businesses, and small loans to farms, and the geographic distribution test for small loans to farms and small loans to businesses. However, the agencies recognize that, even if the proposal were implemented, the available data for the small loans to businesses and small loans to farms borrower distribution tests may be insufficient and, therefore, banks may need to rely on private datasets. Because banks may have to purchase access to these datasets, the agencies invite comment on options for tailoring this requirement by, for example, allowing banks below a certain asset size to use publicly available data as a proxy.

Calculating the CRA evaluation measure. The CRA evaluation measure would be applicable to banks subject to the general performance standards. The CRA evaluation measure would be an objective measure of a bank's ongoing commitment to CRA and would be determined annually at the bank level and for each of its delineated assessment areas, as defined above.[36] A bank would initially calculate its CRA evaluation measure by taking the sum of (1) a bank's qualifying activities value, as described above, *divided by* the average of its quarterly retail domestic deposits and (2) a calculation that accounts for a bank's branch distribution. The agencies would validate that calculation.

The first portion of the CRA evaluation measure reflects a bank's ongoing commitment to CRA by measuring the value of qualifying activities as a proportion of total retail domestic deposits. The second portion of the CRA evaluation measure accounts for the social value and economic impact of bank branches in LMI areas, Indian country, underserved areas, and distressed areas by measuring a bank's proportion of branches in those areas. Specifically, the number of the bank's branches located in LMI census tracts, Indian country, underserved areas, and distressed areas during the same annual period used to calculate the qualifying activities value would be *divided by* the bank's total number of branches in that annual period and *multiplied by* .01.

[36] A bank's assessment area CRA evaluation measures are used to reach a conclusion in each MSA where the bank has deposit-taking facility or main office, as required by the CRA statute.

This calculation would quantify a bank's distribution of branches and increase a bank's CRA evaluation measure by up to one percentage point based on the proportion of a bank's branches in those specified areas. The agencies believe that valuing branch distribution at up to one percentage point of the CRA evaluation measure accounts for the significance of branches to these areas while placing primary emphasis on the qualifying activities that banks conduct in their communities. The CRA evaluation measure would be calculated as follows:

$$\frac{\textbf{\textit{Qualifying Activities Value}}}{\textit{Average quarterly } \textbf{\textit{Retail Domestic Deposits}}} + .01\left(\frac{\textit{Branches in Specified Areas}}{\textit{Total Branches}}\right)$$

Empirical benchmarks, thresholds, and the definition of a major retail lending product line. The proposal would establish the thresholds for the demographic and peer comparators for each of the geographic distribution and borrower distribution tests. The proposal would also establish the empirical benchmarks for the average CRA evaluation measure [37] associated with each rating category. These empirical benchmarks and thresholds are, and would be, based, in part, on the agencies' analysis of the currently available historical data. Specifically, the agencies reviewed the FFIEC CRA data, HMDA data on home mortgages to LMI borrowers, Call Report data on-balance sheet value of home mortgages, consumer loans, small business and small farm loans, and credit bureau data on the outstanding balances of consumer loans. Although these data sources have some limitations,[38] by using all the sources together, collecting additional information about CD investments from historical performance evaluations,[39] and making a limited number of assumptions (described below), the agencies were able to estimate what each bank's average CRA evaluation measure would have been from 2011–2017 under the framework in the proposal for all banks that filed a Call Report.

Since the CRA evaluation measure would generally focus on the on-balance sheet value of qualifying loans and investments, the agencies first identified the categories on the Call Report that could include qualifying loans and investments and then used additional data sources such as the existing FFIEC CRA, HMDA, and credit bureau data to estimate what portion of the activity reported on the Call Report would be qualifying activities under the proposal. To estimate the dollar volume of on-balance sheet activity that would be qualifying activity the agencies did the following:

- For home mortgage loans, by bank and year, the agencies identified all HMDA reportable loans originated and held within the calendar year to LMI individuals,[40] and then divided the sum of the dollar volume of those loans by the bank's total dollar volume of loans originated and not sold within that calendar year. This provides an estimate of a bank- year-specific proportion of identified qualifying loans that was used to calculate the bank's proportion of on-balance sheet qualified home mortgage loans. For banks that are not HMDA filers, the agencies used the median proportion of qualifying home mortgage loans of all HMDA filers for that year.[41] Note that the estimated proportions are based on the proportion of qualifying originations, not on the proportions of qualifying on-balance sheet loans. As such, to the extent that these proportions differ, the estimate of the on-balance sheet value of qualifying mortgage loans may be an over- or underestimate.
- For small business and small farm loans, as defined under the current regulations, the agencies used the FFIEC CRA data to estimate the proportion of the bank's on-balance sheet small business and small farm loans that qualify for CRA credit because they are originated to businesses or farms with revenues of less than $1 million or in LMI census tracts that are less than $1 million . Because the proposal would increase the size of small loans to businesses and small loans to farms that would be qualifying from the current small business loan threshold of $1 million and small farm loan threshold of $500,000 to $2 million and banks do not separately report the on-balance sheet value of loans between the existing thresholds and $2 million, the agencies used, based on additional data sources, a fraction of the dollar volume of loans that were reported on the Call Report as less than $500,000 or $1 million to estimate the dollar volume of loans that were less than $2 million.
- For credit card,[42] automobile loan, and other consumer loan [43] balances, to estimate the proportion of a bank's on-balance sheet consumer loans that are qualifying, the agencies used credit bureau data.[44] The agencies combined the credit bureau data with FFIEC's demographic information at the census tract level [45] to identify whether a given account holder resides in an LMI census tract. Since the credit bureau data does not include income level, the agencies calculated the proportion of credit card loan balances attributable to residents of LMI tracts and used that proportion to represent the proportion of balances attributable to LMI borrowers.[46]

[37] The ''average CRA evaluation measure'' generally refers to the average of the annual assessment area or bank-level CRA evaluation measures for an evaluation period.

[38] For example, under the current CRA regulations, only banks that are above the small bank asset size threshold, which is $1.284 billion for 2019, are required to report CRA data to the FFIEC and not all banks are HMDA reporters. 12 CFR 25.12(u)(1), 195.12(u)(1), 345.12(u)(1). Additionally, both the CRA FFIEC data and the HMDA data look at originations and purchases and not the on-balance sheet value of loans or investments. Although the Call Report and credit bureau data do provide the outstanding amount of loans and investments, those data sources do not identify which balances are related qualifying activities. Moreover, the proposal would expand the criteria for qualifying activities in a number of ways, including by increasing the loan size threshold for small loans to businesses and small loans to farms from $1 million to $2 million. Accordingly, the currently available data on CRA qualifying activities would not fully capture all activities that would be qualifying under the proposal.

[39] The agencies used a sample of performance evaluations completed between 2011 and 2018. The sample contained data from over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is $1.284 billion for 2019.

[40] Excluded from this are home mortgage loans in disaster areas and in Indian country.

[41] This was applied to about 40 percent of the banks.

[42] The agencies included the following credit bureau debt categories in the credit card definition: Credit card, bank card, flexible spending card, retail lending card, and line of credit.

[43] The credit bureau loan categories included are: Other, personal finance, and student loan.

[44] The credit bureau data contain balances by debt category, along with census tract location of the borrower.

[45] For the period 2005–2011, FFIEC uses Census 2000 census tract definitions and demographic information based on Census 2000. For the period 2012–2016, FFIEC uses Census 2010 census tract definitions and American Community Survey (ACS) 2006–2010 data. For the period 2017–2018, FFIEC uses census tract definitions and demographics from 2011–2015 ACS. Note that this method introduces some error due to the fact that the credit bureau uses Census 2000 census tract definitions, while FFIEC uses Census 2000 or Census 2010 census tract definitions depending on the year.

[46] The agencies do not believe this method significantly overestimates the proportion of LMI borrowers or share of balances attributed to them because while this methodology incorrectly

Continued

• For CD Investments, the agencies relied on a sample of performance evaluations completed between 2011 and 2018. The sample contains over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is $1.284 billion for 2019. The agencies approximated the value of investments on a bank's balance sheet by calculating the sum of the balances of prior investments as of the beginning of the evaluation period plus the average annual new investments over the evaluation period. The agencies then calculated the median investments-to-domestic-deposits ratio by asset size bucket (*i.e.,* assets greater than $100 billion, $5 to $100 billion, and less than or equal to $5 billion) for the performance evaluation sample.[47] This median ratio was then used to impute CD investments for all institutions subject to CRA, by multiplying a bank's deposits in a given year with the ratio corresponding to its asset size bucket. A limitation of this approach is that the median ratio by asset size used for imputation is only based on banks above the small bank asset size threshold, and it is possible that this ratio differs for smaller banks.

• For CD loans, the agencies relied on the FFIEC CRA data that contains information on the dollar amount of CD loans originated that year.

By using these estimates, the agencies were able to approximate what the CRA evaluation measure under the proposed framework would have been for all banks from 2011–2018. In addition to the data, to set the initial benchmarks for the average CRA evaluation measure and the thresholds for the retail lending distribution tests, the agencies analyzed banks' past performance evaluations, which provide qualitative information to help inform what level of performance should be required for each rating category. The agencies also considered unmet needs and opportunities, such as those in banking and CD deserts, market conditions, and the overall policy goal of increasing CRA activities. The agencies would publish the empirical benchmarks for the average CRA evaluation measures that correspond with each rating category and the thresholds for the retail lending distribution test with the final rule.

Based on the agencies' review of these factors thus far, the agencies believe that the average CRA evaluation measure benchmarks associated with each rating category should be set at between ten and 15 percent for outstanding, five and ten percent for satisfactory, and two and five percent for needs to improve. As discussed above, the proposal would set 11 percent as the initial benchmark for outstanding, six percent as the initial benchmark for satisfactory, and three percent as the initial benchmark for needs to improve. An average CRA evaluation measure of less than three percent would be associated with the substantial noncompliance rating category.

The agencies are aware, however, that there are some limitations in the data currently available including that available data do not currently include, for example, the dollar volume of CD investments or a quantification of the dollar value of CD services. In addition, available data do not necessarily map perfectly to the configuration of assessment areas specified in this proposal. Deposit data also have limitations because the current reporting framework records deposits by attributing them to a branch location, rather than the account holder's address and uses a different definition of deposits than the proposed rule. The proposed rule would remedy these deficiencies by leveraging data that are readily available but not currently reported in an integrated and accessible manner. Over time, the data collection, recordkeeping, and reporting requirements in this proposal would remedy the current data limitations. Further, after the issuance of this notice of proposed rulemaking and prior to the issuance of any final rule, the agencies plan to request additional data through a public request for information from banks and other interested parties to supplement the currently available data.

Until the data limitations are addressed, the agencies would consider the historical data of reported lending and compare it to historical levels of total domestic deposits to determine the specific empirical benchmarks for CRA evaluation measures that are applicable at the bank and assessment area levels within the ranges set forth in the proposal. The agencies would then review and adjust these empirical benchmarks and make them available publicly to promote transparency and predictability. The agencies expect to adjust these empirical benchmarks every three years, or sooner if warranted.

The proposal also defines major retail lending product lines as any retail lending product line that composes at least 15 percent of the bank's overall dollar volume of retail loan originations during the evaluation period. Regarding this definition, the agencies reviewed HMDA and FFIEC CRA data on the dollar volume of retail loan originations along with Call Report data on the on-balance sheet value of consumer loans. Because the Call Report only includes on-balance sheet values, the agencies assumed that the quarterly change in the on-balance sheet value of consumer loans reflects new consumer loan originations.

CD minimums. The general performance standards would establish minimums for a bank's quantified value of CD lending and investment as compared to retail domestic deposits at both the assessment area and bank level to achieve a satisfactory or an outstanding rating. The CD minimums included in the proposal were informed by the analysis of the currently available historical data, described above. To achieve a presumptive rating of satisfactory or outstanding, the sum of the quantified value of community development loans and community development investments, *divided by* the average of the bank's retail domestic deposits would need to meet or exceed two percent. The CD minimums would apply at both the assessment area and bank level. These minimums reflect the agencies' judgment that CD lending and investment are critically important to serving banks' local communities.

Performance context. Under the current framework, a bank's CRA performance is judged in the context of information about a bank and its assessment area(s), including (1) relevant demographic data (*e.g.,* median income levels, distribution of household income, nature of housing stock, housing costs); (2) lending, investment, and service opportunities; and (3) the bank's product offerings and business strategy, capacity and constraints, past performance, and performance of similarly situated lenders. Under the proposed framework, performance context would remain important. The proposal sets forth performance context factors that the agencies would consider in determining a bank's assigned ratings in each assessment area and at the bank level. Banks subject to the general performance standards would submit performance context information in a standardized format using a form on the agency's website that relies on the performance context factors, discussed below. In addition, the agencies would establish examination procedures to

includes middle- and upper-income borrowers in LMI census tracts, it also incorrectly excludes LMI borrowers in middle- and upper-income census tracts. Because the two sources of error work in opposite directions, the agencies expect them to cancel each other out to a significant extent.

[47] Asset size buckets were determined by data explorations of the relationship between the investments-to-deposits ratio and asset size, in conjunction with sample size considerations.

help ensure that examiners apply performance context consistently.

The performance context factors focus on the capacity of the bank to engage in qualifying activities and the demand for and opportunity to engage in qualifying activities in the communities that the bank serves. In considering a bank's capacity, the agencies would assess its business strategy, size, and other factors that affect its engagement in qualifying activities, including structural or other constraints on a bank's ability to engage in the volume of CD lending and investment required to meet the CD minimums, if applicable. Regarding the demand for and opportunity to engage in qualifying activities in a bank's community, the agencies would consider public comments related to community needs and opportunities and assess the characteristics of the community served by the bank, such as economic conditions and demographics, as these factors relate to the demand for and the opportunity to engage in qualifying activities. The agencies would consider how differences between actual and expected levels in qualifying activities were affected by a bank's capacity and opportunity, including local market conditions and events during the relevant period, or bank characteristics, such as product offerings and business strategy, changes in the assessment area needs and opportunities, and bank-specific constraints such as financial condition or safety and soundness considerations. For example, consideration of performance context could be particularly important for a bank that does not engage in retail lending activities because its business model limits the range of qualifying activities in which the bank may engage. The agencies could also consider innovativeness, complexity, difficulty, or positive impact on the bank's assessment areas or significant qualifying activities, as well as differences in banks' business models that affected the volume and types of qualifying activities. Finally, the agencies could consider a bank's investments in promoting and supporting the community reinvestment expertise of its staff and the development of products and services that benefit LMI communities.

Discriminatory or other illegal credit practices. Under the proposal, an agency's evaluation of a bank's CRA performance would be adversely affected by evidence of discriminatory or other illegal credit practices. Specifically, in assigning a CRA rating, an agency would first evaluate a bank's performance for the applicable time period and then make any adjustments to the presumptive rating that would be warranted based on evidence of discriminatory or other illegal credit practices, consistent with the relevant agency's policies and procedures.

Strategic plans. The proposal retains the option for a bank to develop a strategic plan for addressing its CRA responsibilities and to be evaluated based on its performance under the plan. Under the proposal, a bank's strategic plan would be developed with public participation and would demonstrate how the bank would help meet the credit needs—particularly the needs of LMI census tracts and individuals—of its assessment area(s) and at the bank level through qualifying activities. Today, although any bank may request to be evaluated under a strategic plan, only a limited number of banks with unique business models or other unique circumstances use them. Because the proposal would not add additional eligibility requirements for strategic plans, the agencies expect that strategic plans would continue to be used in a similar manner. For example, a de novo bank could develop goals under a strategic plan that reflect its projected branch footprint and deposit growth, its planned lending activities, and its anticipated capacity to engage in qualifying activities. Additionally, banks with no retail domestic deposits and banks evaluated under the small bank performance standards that do not originate retail loans would be required to submit a strategic plan.

Small bank performance standards. The current CRA regulations include specific performance evaluation standards for small banks and intermediate small banks.[48] Specifically, a small bank is evaluated pursuant to a lending test that considers the bank's:

- Loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
- The percentage of loans and, as appropriate, other lending-related activity in the bank's assessment area(s);
- The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
- The geographic distribution of the bank's loans; and
- The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).[49]

The current regulations assign small bank ratings based on the lending test. A small bank is eligible for a ''satisfactory'' rating under the lending test if it demonstrates a:

- Reasonable loan-to-deposit ratio;
- Majority of its loans in its assessment area(s);
- Distribution of loans to businesses and farms of different sizes that is reasonable given the demographics of its assessment area(s);
- Record of taking appropriate action in response to written complaints, and
- Reasonable geographic distribution of loans given the bank's assessment area(s).[50]

A small bank that meets all of those standards and exceeds some or all of them may warrant consideration for a lending test rating of ''outstanding.''[51] To determine whether the overall performance of a small bank that is not an intermediate small bank warrants a rating of outstanding, the agency carrying out the evaluation considers the extent to which the bank exceeds the performance standards for a rating of ''satisfactory'' and its performance in making qualified investments and providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).[52] A small bank may receive an overall rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.[53]

Under the proposal, small banks would not be evaluated pursuant to the general performance standards that consider a bank's CRA evaluation measure and the retail lending distribution tests. Instead, small banks would continue to be evaluated according to the small bank performance standards applicable to small banks that are not intermediate small banks in the current CRA regulations, unless they are evaluated under an approved strategic plan or

[48] 12 CFR 25.26, 195.26, 345.26.

[49] 12 CFR 25.26(b), 195.26(b), 345.26(b).

[50] 12 CFR part 25, Appendix A, paragraph (d)(1)(i), part 195, Appendix A, paragraph (d)(1)(i), part 345, Appendix A, paragraph (d)(1)(i).

[51] 12 CFR part 25, Appendix A, paragraph (d)(1)(ii), part 195, Appendix A, paragraph (d)(1)(ii), part 345, Appendix A, paragraph (d)(1)(ii).

[52] 12 CFR part 25, Appendix A, paragraph (d)(3)(ii)(B), part 195, Appendix A, paragraph (d)(3)(ii)(B), part 345, Appendix A, paragraph (d)(3)(ii)(B).

[53] 12 CFR part 25, Appendix A, paragraph (d)(3)(iii), part 195, Appendix A, paragraph (d)(3)(iii), part 345, Appendix A, paragraph (d)(3)(iii).

elect to opt into the general performance standards. Performance context and discriminatory and other illegal credit practices would continue to be considered in evaluating a small bank's performance. In addition, under the proposed framework, small banks would continue to refer to relevant guidance in the Interagency Questions & Answers and existing policies and procedures, including with respect to state and MMSA ratings. As proposed, a small bank may choose to exercise an opt in to the proposed general performance standards and must do so at least six months before the start of its next exam cycle. Once a small bank opts in, it would be subject to the general performance standards outlined in the proposed rule for its next CRA evaluation. A small bank that has opted in may exercise a one-time opt out at the end of any CRA evaluation following the opt in and must do so six months before the start of its next exam cycle. Small banks that opt out would revert to being evaluated according to the small bank performance standards applicable to small banks that are not intermediate small banks in the current CRA regulations, unless they are evaluated under an approved strategic plan, until such time that they cease to be small banks based on their assets size.

The proposal would also revise the definition of a ''small bank.'' Under the current regulations, in 2019, a small bank is a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion, and an intermediate small bank is a small bank that had assets of at least $321 million as of December 31 of both of the prior two calendar years and assets of less than $1.284 billion as of December 31 of either of the prior two calendar years.[54] These thresholds are adjusted annually based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W).[55]

Under the proposal, a small bank would be a bank that had assets of $500 million or less in each of the previous four calendar quarters. Like the current asset-size thresholds, the $500 million threshold would be adjusted annually based on changes in the CPI–W. Unlike the current CRA regulations, the proposal would not include a separate category for intermediate small banks.

Although the proposed small bank performance standards would not include a CD test and small banks would not be required to engage in CD activities, lending-related activities, including CD loans, and CD investments and services may be considered as described above. The proposal would replace references to ''qualified investments'' in the applicable small bank provisions of the current CRA regulations with references to ''community development investments.'' The proposal's definitions of qualifying loans and CD services also would apply to small banks. Small banks that engage in qualifying activities as described under proposed 12 CFR 25.04 and 345.04 would receive consideration for those activities to the extent that they were consistent with the small bank performance standards and appendix A. The agencies also recognize that because the small bank performance standards would be applied consistent with the current regulatory framework, certain activities that do not meet the qualifying activities criteria in §§ 25.04 and 345.04 would receive positive consideration. In addition to the revised qualifying activities criteria, small banks also would be subject to the proposal's changes to the assessment area delineation requirements and would be required to delineate deposit-based assessment areas to the same extent as other banks.

The proposed small bank asset-size threshold and the lower burdens imposed by the small bank performance standards recognize that complying with the data collection, recordkeeping, and reporting requirements under the new general performance standards may impose a disproportionate burden on these banks. The agencies note, however, that the available data indicates that small banks may outperform larger banks if they were subject to the general performance standards.

Summary of objectives. Taken together, the proposed changes to how a bank's CRA activity is evaluated would reduce the subjectivity and inconsistencies in the current framework. The two components of the proposal's CRA evaluation under the new general performance standards—the CRA evaluation measure and the retail lending distribution test—would work together to encourage banks to engage in a variety of activities that provide credit to LMI individuals, small business, small farms, and in areas of need, as well as to incentivize long-term investments in these communities. The retail lending distribution tests would help ensure that banks' retail loans are appropriately distributed to areas and people in need of credit in the local areas where banks have a concentration of depositors or in the areas surrounding bank branches. And the CRA evaluation measure's focus on the value of on-balance sheet loans and investments would encourage stable commitments to communities and disincentivize churning of activities that may not provide long-term stability.

The proposed combined objective method for measuring CRA performance and activity in conjunction with the establishment of transparent benchmarks and thresholds would reduce inconsistency and subjectivity in the current CRA framework and could incentivize more CRA activity. For example, by selecting sufficiently high empirical benchmarks for the average CRA evaluation measure—informed by historical performance levels—under the new general performance standards, the agencies could encourage more qualifying activities. The CD lending and investment minimums would recognize the importance of CD activities to serving a community's needs. Similarly, the small bank performance standards would continue to ensure that small banks' lending and lending-related activities are responsive to the needs of their communities. Furthermore, by preserving a role for performance context, the agencies would continue to consider the specific facts and circumstances that affect a bank's CRA capacity and opportunities and account for them through the consistent and transparent exercise of judgment.

In addition, the proposal would account for differences in bank size, location, and business model in several ways. As an initial matter, small banks would continue to be evaluated pursuant to performance standards designed specifically for small banks that consider their lending opportunities and business model. For banks that are not evaluated as small banks, the retail lending distribution test component of the general performance standards would account for bank size, location, and business model in two ways while assessing whether a bank is adequately serving the LMI individuals and areas in its assessment area. First, the retail lending geographic distribution test and borrower distribution test would look at a bank's geographic and borrower distributions of retail lending activities in LMI areas and to LMI individuals, small farms, or small businesses in its assessment areas, as applicable. For each type of retail activity, the distribution test would look at a bank's qualifying activities conducted as a percentage of a bank's lending in that area and, accordingly, would be scaled

[54] 12 CFR 25.12(u)(1), 195.12(u)(1), 345.12(u)(1).

[55] 12 CFR 25.12(u)(2), 195.12(u)(2), 345.12(u)(2).

automatically to a bank's presence in that market, its location, and its chosen business model. Second, a bank's retail lending geographic distribution and borrower distribution would be evaluated based on its best performance under either a demographic or peer comparator, both of which would incorporate information about a bank's location. This flexibility and focus on the distribution of the number of qualifying retail loans would help to ensure that the retail lending distribution test accounts for bank size, location, and business model. The CRA evaluation measures also would account for differences in bank size, location, and business model because these differences would be reflected in the volume of a bank's retail domestic deposits at the bank level and in each assessment area.

Alternatives considered. The agencies also considered other approaches to evaluating CRA performance for banks other than small banks. The agencies first considered having a performance test that would have been based solely on the total dollar volume of spending on qualifying activities. Specifically, this approach would have relied solely on a calculation that compares a bank's average CRA evaluation measure—calculated by *dividing* its yearly qualifying activities value by its average retail domestic deposits—to empirical benchmarks to evaluate a bank's CRA performance, without overlaying a retail lending distribution test. This method would have clarified how banks' CRA performance is evaluated and provided additional consistency that would have enabled banks to predict and track their performance throughout the review period. Further, this method of evaluating CRA performance could have directly achieved more CRA spending and investment in communities that need it most. However, this approach would not have accounted for a bank's distribution of the number of retail loans, which is currently an important part of evaluating a bank's CRA performance. In addition, without limits on the credit received for a single transaction, this method of evaluating CRA performance could have encouraged banks to meet their CRA obligations through a small number of large dollar retail or CD activities.

Second, the agencies considered retaining a separate CD and retail lending test. For the CD test, the agencies considered establishing empirical benchmarks for assessing performance related to a bank's on-balance sheet dollar volume of CD activities as compared to the dollar value of its retail domestic deposits. A bank's performance on the retail lending test would have been based on its performance on geographic and borrower distribution tests in each assessment area for all major retail lending product lines. The agencies would have developed thresholds, corresponding to statutory rating categories, for a bank's performance on the retail lending distribution tests and the bank would have been required to meet the thresholds for all tests for each major retail lending product line to achieve the corresponding rating. This method of evaluating a bank's CRA performance would also have provided certainty and clarity and enabled a bank to monitor its performance throughout its review period. However, this method would not have focused on increasing the overall dollar volume of qualifying activities in the areas that need it most and would not have helped address CRA deserts and hotspots. Accordingly, to ensure that the distribution of the number of CRA retail loans and the total volume of spending on qualifying activities would be captured and assessed, the proposed rule would provide that the ratings for a bank evaluated under the general performance standards would be based on both the distribution of retail loans and impact, measured in dollars, of the bank's qualifying activities.

Further, while developing this proposal, the agencies considered several possible definitions of retail domestic deposits to determine which definition would best reflect a bank's capacity to engage in qualifying activities. First, the agencies considered using total domestic deposits, as reported on Schedule RC, item 13.a, of the Call Report, which is the definition of deposits currently used in the FDIC Summary of Deposits report. This definition includes deposits from individuals, partnerships, and corporations, the U.S. government, states and political subdivisions in the United States, commercial banks and other depository institutions in the United States, banks in foreign countries, foreign governments, and official institutions, including foreign central banks. After considering this definition, the agencies determined that it could overestimate a bank's capacity to engage in qualifying activities by including municipal deposits and deposits from foreign governments and entities.

The agencies also considered using the sum of total deposits intended primarily for personal, household, or family use, as reported on Schedule RC–E, items 6.a, 6.b, 7.a(1), and 7.b(1). This could more accurately reflect a bank's capacity to engage in qualifying activities for individuals, small businesses, and small farms; however, currently, only institutions over $1 billion in total assets that offer one or more consumer deposit account products are required to report that information. Accordingly, the agencies did not use this definition in the proposal because using it would have created additional reporting requirements for banks not currently required to report this information. In addition, the agencies considered scaling the empirical benchmarks for the average CRA evaluation measure at the assessment area level but determined that by relying on the volume of a bank's retail domestic deposits in each assessment area, the measure already accounts for differences in bank size, location, and business model.

The agencies also considered developing a method for evaluating a bank's use of alternative delivery systems and mechanisms, such as mobile banking, for meeting the needs of LMI customers. For example, the agencies considered adding a performance standard that accounts for a bank's use of alternative delivery systems that serve LMI individuals, such as the number of a bank's LMI customers that used an alternative delivery system divided by the number of the bank's LMI customers.

The agencies invite comment on all aspects of the proposal related to the proposed method and process for objectively measuring bank CRA performance, including with respect to the following questions:

14. The proposed rule would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC–E, item 1, of the Call Report, excluding brokered deposits. Is there another definition—including the alternatives described above—that would better reflect a bank's capacity to engage in CRA qualifying activities?

15. The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank's distribution of branches by increasing a bank's quantified value of qualifying activities divided by retail domestic deposits (a bank's CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank's branches that are in specified areas of need. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if

there are very few specified areas of need in the areas they serve. Does this appropriately incentivize banks to place or retain branches in specified areas of need, including LMI areas? Does it appropriately account for the value of branches in these areas?

16. Under the retail lending distribution tests, the proposal would consider the borrower distribution of any consumer loan product line that is a major retail lending product line for the bank. The agencies defined a major retail lending product line as a retail lending product line that comprises at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period, but also considered setting the threshold between 10 and 30 percent. Should the agencies consider a different threshold? Additionally, applying the retail lending distribution test to only major retail lending product lines means that not all retail lending product lines will be evaluated for every bank. Are there any circumstances in which applying the retail lending distribution test to a consumer lending product line should be mandatory, even if it is not a major retail lending product line (e.g., if the consumer lending product line constitutes the majority of a bank's retail lending in number of originations)? Additionally, the proposal would only apply the retail lending distribution tests in assessment areas with at least 20 loans from a major product line. Is 20 loans the appropriate threshold, or should a different threshold, such as 50 loans, be used?

17. Under the proposal, a bank evaluated under the general performance standards could not receive a satisfactory or an outstanding presumptive bank-level rating unless it also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposit. Should 50 percent be the threshold used to determine ''significant portion of a bank's assessment area'' and ''significant amount of deposits'' for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent, be used?

18. Under the proposal, banks that had assets of $500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is $500 million the appropriate threshold for these banks? If not, what is the appropriate threshold? Should the threshold be $1 billion instead?

19. Under the proposal, small banks (i.e., banks with $500 million or less in assets in each of the previous four calendar quarters) may choose to exercise an opt into and a one-time opt out of the general performance standards. Should small banks that opt in to the general performance standards be permitted to opt out and be examined under the small bank performance standards for future evaluations and, if so, how frequently should this be permitted?

D. Data Collection, Recordkeeping and Reporting

The current CRA framework requires banks to collect and report a variety of data on loans.[56] However, small banks, as defined under the current rule, generally are exempt from these requirements.[57] The current framework also does not collect data on all CRA activity. For example, the agencies do not currently collect data on CD investments or CD services. Deposit data that are otherwise available also have limitations because banks currently record deposits in locations other than the address of the account holder. While CRA performance evaluations may provide information on CRA activities that is not otherwise collected, that information is not reported in an accessible manner.

The proposed framework includes data collection, recordkeeping, and reporting requirements that would apply to banks. There would be separate data collection and reporting requirements for banks subject to the general performance standards and for banks subject to the small bank performance standards.

Banks evaluated under the general performance standards. Banks evaluated under the general performance standards would be required to collect and maintain their retail lending distribution tests results, CRA evaluation measures calculations, and presumptive ratings determinations. They would be required to collect and maintain data for each qualifying loan or CD investment on-balance sheet and CD services and monetary and in-kind donations that the bank provides until the completion of its next evaluation. For each qualifying activity, among other things, a bank would collect and maintain records of the dollar value of the activity, the activity location, how the activity satisfies the qualifying activities criteria, and whether it serves a particular assessment area. For each qualifying loan and investment, a bank would collect and maintain records of the dollar value of the activity as of the close of business on the last day of each month that the loan or investment is on-balance sheet, or, in the case of a monetary or in-kind donation, its quantified value; a unique identification number or symbol; and the type of loan or investment. In addition, for qualifying loans, a bank would need to collect and maintain the date of origination or purchase; the date of sale, if sold by the bank within 90 days of origination; an indicator of whether the loan was originated or purchased; the loan amount at origination or purchase; and the income or revenue of the borrower. For each qualifying investment, a bank would need to collect and maintain the date of the investment. A bank would also collect and maintain records of descriptions of each qualifying CD service and the date on which each CD service was performed. The value of each retail domestic deposit account and the physical address of each depositor at the end of each quarter also would be collected and maintained. Banks also would be required to collect and maintain certification from each relevant party in those situations where the bank is substantively conducting qualifying activities, but the activity is nominally done by another party, such as an affiliate.

To implement the retail lending distribution tests, banks would be required to collect and maintain records of the number of all qualifying and non-qualifying retail loans at the census-tract level and report at the county or county equivalent level. Banks also would be required to collect and maintain information on home mortgage and consumer loans originations that do not qualify for CRA credit. For each of those loans, a bank would be required to collect and maintain a unique identification number or symbol, the loan type, the date of origination, the loan amount at origination, the loan location, and the income of the borrower.

For each assessment area, a bank would be required to collect and maintain a list of each county or county equivalent, metropolitan division, nonmetropolitan area, metropolitan statistical area, and state within the assessment area. Banks would also collect and maintain information indicating whether each of its facilities is a depository or non-depository facility.

[56] 12 CFR 25.42, 195.42, 345.42.

[57] *Id.*

Banks would be required to collect and maintain records of qualifying activities data at the bank level and for each assessment area. The data collected and records maintained would include information on all qualifying activities conducted by the bank.

The proposal describes how banks would determine the location of an activity. The location of retail loans would be the address of the loan, determined by the borrower's physical address for consumer loans, the address of the property that relates to a home mortgage loan, and the address of the main business facility or farm or the physical address where loan proceeds will be applied, as indicated by the borrower, for business and farm loans. A CD loan, CD investment, and CD service would be located in the census tract that includes a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project. If a bank cannot document how the funding it provided was allocated, the services or funding would be allocated across all of the bank's assessment areas and other metropolitan and non-metropolitan statistical areas served by the loan or investment according to the share of the bank's retail domestic deposits in those areas. For example, if a CD investment served an assessment area with four percent of the bank's deposits and three other metropolitan statistical areas in which the bank did not have an assessment area but did have two percent of its total deposits in each, 40 percent of the dollar value would be allocated to the assessment area and the other 60 percent would be considered in the bank-level calculation.

The proposal would require banks to collect and maintain all necessary data in machine readable form. To facilitate compliance with the data collection and recordkeeping requirements, the agencies would provide additional guidance on the specific data points that a bank would need to collect and maintain and the way the data would be recorded. The agencies would review a sample of a bank's collected data that was used to determine the presumptive rating as part of a bank's CRA evaluation. The agencies would also use this information to measure, assess, and understand bank CRA performance across the industry.

Annually, banks would report their retail lending distribution tests results, CRA evaluation measures calculations, and presumptive ratings determinations to the agencies. Banks would also provide the annual quantified value of the following activities as of the close of business on the last day of each month: (1) Qualifying retail loans; (2) CD loans; (3) CD investments; and (4) CD services. Banks also would be required to report annually (1) information on the number of home mortgage loans, consumer loans, by product line, small loans to businesses, and small loans to farms; (2) the average monthly value of retail domestic deposits; and (3) assessment area information. For each assessment area, a bank would be required to report a list of each county or county equivalent, MD, nonmetropolitan area, MSA, and state within the assessment area. Banks also would need to provide a certification from each affiliate or other third party that the qualifying activity information collected from that affiliate or other third party is true and correct and report performance context information. To reduce data collection, recordkeeping, and reporting burdens, the proposal leverages the retail domestic deposit figure reported quarterly on the Call Report for use in calculating the CRA evaluation measure, although banks would be required to subtract brokered deposits from that figure. The proposed rule would also reference a form, available on the agencies' websites, that banks could use to meet the reporting requirements to promote consistency and reduce compliance burdens.

Summary of objectives. While the agencies understand that the proposed data collection, recordkeeping, and reporting requirements would require upfront changes that will result in increased costs, particularly for smaller banks, the agencies believe that, over time, the benefits to transparency, simplicity, and consistency would outweigh those one-time, upfront costs. The agencies believe that the vast majority of data collection, recordkeeping, and reporting costs would decrease over time through the development and implementation of automated systems. The availability of third-party service providers that provide data-related services across many banks could help banks meet these new requirements and, because third-party service providers may be able to achieve economies of scale, could further reduce costs for smaller banks.

Certain data that the proposal would require is not currently collected or reported, but most of the information is available currently or could be obtained without undue cost going forward. The agencies believe that the benefits banks would realize from the proposal, such as certainty regarding which activities would qualify for CRA credit and where, would offset some, if not most, of the costs of the proposal. Moreover, banks may find that the proposed requirements provide non-CRA business benefits by, for example, providing further insights into the location and potential needs of their customers.

Banks evaluated under the small bank performance standards. Banks evaluated under the small bank performance standards would generally be exempt from the data collection, recordkeeping, and reporting requirements of this proposal. However, these banks would be required to collect and maintain information on retail domestic deposits, based on the physical address of the depositor.

Public disclosures. The agencies would make certain information that banks provide publicly available, allowing stakeholders to detect trends and monitor and compare banks' CRA activities. This standardized data would allow for informed public input. In addition, the agencies would publish each bank's ratings and a list of banks rated ''outstanding.'' A bank receiving an outstanding rating would also receive a certificate or seal to be displayed and to inform the public of its CRA performance. Moreover, banks that receive a bank-level outstanding CRA rating would be subject to a five-year CRA evaluation period unless the data reported indicates that an earlier evaluation is warranted. The agencies invite comment on other ways to incentivize banks to achieve an outstanding rating.

The proposal would also retain many of the current regulation's provisions related to the public file,[58] planned examination schedules,[59] public notice by banks,[60] and the CRA notice.[61] Banks would still need to provide public notice to the communities they serve that community members are entitled to CRA-related information. Banks would also need to provide the requested CRA-related information to the community members. CRA-related information would still include information about banks' branches, locations, and services, comments received from the public related to assessment area needs and opportunities, and responses to those comments. However, banks would not have to provide data reported through HMDA in the public file because the proposal would collect home mortgage data directly instead of relying on HMDA data.[62] Additionally, recognizing

[58] 12 CFR 25.43, 195.43, 345.43.

[59] 12 CFR 25.45, 195.45, 345.45.

[60] 12 CFR 25.44, 195.44, 345.44.

[61] 12 CFR part 25 Appendix B, part 195 Appendix B, part 345 Appendix B.

[62] HMDA data are still available to the public and can be accessed here: *https://*

Continued

the advances in technology over the past couple of decades, banks would no longer be limited to providing public notice or making available the CRA information through physical means. Instead, banks would have the option to provide public notice or make available CRA-related information on their websites. If a community member who has requested CRA-related information does not have access to the internet, banks could offer to print out the information at that person's expense, instead of copying the information from a physical file.

CRA sunshine requirements. In addition to the proposed data collection, recordkeeping, and reporting provisions contained in this proposal, the agencies note that Congress required the agencies to issue rules implementing the CRA Sunshine Requirements as part of the Gramm-Leach-Bliley Act of 1999.[63] The agencies' regulations define and address written agreements between financial institutions and nongovernmental entities or persons that are made in fulfillment of the CRA, and require that those agreements be made available to the public and the appropriate Federal banking agency.[64] Further, the regulations require parties to a covered agreement to file reports with the appropriate Federal banking agency for the duration of the agreement. The agencies emphasize the continued importance of complying with those regulations to ensure public awareness of the terms and conditions of covered agreements.

Alternatives considered. Under the proposal, small banks would be required to collect and maintain information on depositors necessary for the designation of deposit-based assessment areas. To limit the recordkeeping burdens for small banks, the agencies are considering alternatives for small bank data collection, including a full exemption from any recordkeeping requirements. For example, the agencies could exempt a small bank from any recordkeeping requirement associated with the designation of deposit-based assessment areas—which is designed to capture non-traditional business models of internet banks or other banks that have one or a few physical locations but operate on a national basis—if the bank demonstrates that it has a traditional business model to the agencies' satisfaction.

The agencies invite comment on all aspects of the proposal related to the proposed data collection, reporting, and recordkeeping requirements, including with respect to the following question:

20. As discussed above, the proposal would require banks to collect and report additional data to support the proposed rule. Although most of this data is already collected and maintained in some form, some additional data collection may be required. For example, banks may need to gather additional data to determine whether existing on-balance sheet loans and investments are qualifying activities. Are there impediments to acquiring this data? If so, what are they?

21. What burdens, if any, would be added by the proposed data collection, recordkeeping, and reporting requirements?

a. *What system changes would be needed to implement these requirements?*

b. *What are the estimated costs of implementing these requirements?*

22. The proposal would require small banks to collect and maintain certain deposit-based assessment area data. Are there other ways the agencies can limit the recordkeeping burden associated with the designation of deposit-based assessment areas, including other ways for banks to differentiate between traditional and internet type business models?

E. Effective Date and Compliance Dates

The agencies propose that the effective date of the final rule would be the first day of the first calendar quarter that begins at least 60 days after the issuance of the final rule. However, to reduce the compliance burden of the final rule, the proposed rule would include a transition period through varying compliance dates after the effective date to allow banks to revise their systems for collecting, maintaining, and reporting data and to establish processes for calculating their qualifying activities values and CRA evaluation measures and determining their presumptive ratings. Specifically, the proposed rule would provide a bank other than a small bank with (1) one year after the rule's effective date to comply with the rule's assessment area, data collection, and recordkeeping requirements and (2) two years after the rule's effective date to comply with the rule's reporting requirements. The proposed rule would provide small banks with one year after the rule's effective date to comply with the rule's assessment area and applicable data collection and recordkeeping requirements. All banks would not comply with the applicable remaining requirements of the rule—and thus would not be evaluated under the new framework—until they complete their evaluation period that concludes immediately after the reporting requirements compliance date in 12 CFR 25.01(c)(4)(i)(A)(*2*) and 345.01(c)(4)(i)(A)(*2*) of the proposed rule, including any extensions approved by their relevant agencies.

To reduce the burden on small banks, the proposed rule would provide small banks that opt into the general performance standards under proposed 12 CFR 25.09(b) and 345.09(b) as of the final rule's effective date and banks that no longer meet the definition of a small bank (1) two years after the rule's effective date or after the bank no longer meets the definition of a small bank to comply with the rule's assessment area, data collection, and recordkeeping requirements and (2) three years after the rule's effective date or after the bank no longer meets the definition of a small bank to comply with the rule's reporting requirements. However, small banks that choose to opt into the general performance standards under proposed §§ 25.09(b) and 345.09(b) after the effective date would receive (1) one year after the bank opts in to comply with the rule's assessment area, data collection, and recordkeeping requirements and (2) two years after the bank opts in to comply with the rule's reporting requirements.

The agencies invite comment on all aspects of the proposal related to the proposed compliance date provisions, including on the proposed transition periods and potential reduction of small bank burden.

V. Qualifying Activities Illustrative List

This list is a non-exhaustive, illustrative list of examples of activities that would or would not qualify under proposed §§ 25.04 and 345.04. The list is intended to identify activities that would or would not meet the criteria in the proposed rule. The proposed rule contemplates that the agencies will add additional activities that meet or do not meet the qualifying activities criteria consistent with the process outlined in proposed 12 CFR 25.05 and 345.05.

www.consumerfinance.gov/data-research/hmda/historic-data/.

[63] *See* 12 U.S.C. 1831y; 12 CFR parts 35, 207, 346.

[64] *See* 12 CFR part 35.

Proposed qualifying regulatory criteria	Description
§§ 25.04(b) and 345.04(b)	*Retail loans. A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:*
§§ 25.04(b)(1) and 345.04(b)(1)	*Provided to a:*
§§ 25.04(b)(1)(i) and 345(b)(1)(i)	*Low- or moderate-income individual or family;*
	Loan classified on the bank's Call Report as a 1–4 family residential construction loan to an LMI individual.
	Closed-end loan or open-end line of credit classified on the bank's Call Report as a loan secured by a 1–4 family residential property to an LMI individual.
	Loan classified on the bank's Call Report as secured by a multifamily residential property to an LMI individual.
	Home mortgage loan guaranteed by the Federal Housing Administration (FHA) to an LMI individual.
	Home mortgage loan guaranteed under the FHA's 203(b) Mortgage Insurance Program to an LMI individual.
	Home mortgage loan guaranteed under the FHA's Limited 203(k) Program to an LMI individual.
	Home mortgage loan guaranteed under the U.S. Department of Housing and Urban Development's (HUD) Indian Home Loan Guarantee Program (Section 184) to an LMI individual.
	Home mortgage loan guaranteed by the U.S. Department of Agriculture's (USDA) Rural Housing Service to an LMI individual.
	Home mortgage guaranteed by the U.S. Department of Veterans Affairs (VA) to an LMI individual.
	Credit card to an LMI individual.
	Low-cost education loan to an LMI individual, such as to fund school tuition and/or expenses.
	Home equity line of credit to an LMI individual, such as for home improvement.
	Non-credit card revolving credit line, such as for purchase of home appliances, to an LMI individual.
	Consumer loan to an LMI individual for purposes other than purchasing an automobile, such as to fund unexpected medical expenses.
	Automobile loan to an LMI individual to purchase a car.
	Installment loan to an LMI individual to purchase home appliances.
§§ 25.04(b)(1)(ii) and 345(b)(1)(ii)	*Small business; or*
	Loan or line of credit of $2 million or less to a business with gross annual revenues of $2 million or less when classified on the bank's Call Report as a commercial and industrial loan.
	Loan or line of credit of $2 million or less to a business with gross annual revenues of $2 million or less when classified on the bank's Call Report as a loan secured by nonfarm nonresidential properties.
	Loan of $1.5 million under the U.S. Small Business Administration (SBA) Certified Development Company/504 Loan Program that covers 50 percent of the project's cost and is secured by a first lien on real property.
	Loan of $700 thousand to a business with gross annual revenues of $2 million or less to make improvements to its manufacturing facility under the SBA 7(a) loan program.
	Loan of $2 million to a business with gross annual revenues of $2 million or less to finance the purchase of machinery under the USDA's Rural Development Business and Industry Guarantee Loan Program.
§§ 25.04(b)(1)(iii) and 345.04(b)(1)(iii)	*Small farm;*
	Loan or line of credit of $2 million or less to a farm with gross annual revenues of $2 million or less when classified on the bank's Call Report as a loan to finance agricultural production and other loans to farmers.
	Loan or line of credit of $2 million or less to a family farm with gross annual revenues of $2 million or less when classified on the bank's Call Report as a loan to finance agricultural production and other loans to farmers.
	Loan of $800 thousand to a family farm with gross annual revenues of $1.5 million to finance the purchase of equipment.
§§ 25.04(b)(2) and 345.04(b)(2)	*Located in Indian country;*
	Loan or line of credit made in Indian country and classified on the bank's Call Report as a 1–4 family residential construction loan.
	Closed-end loan or open-end line of credit made in Indian country and classified on the bank's Call Report as a loan secured by a 1–4 family residential property.
	Loan made in Indian country and classified on the bank's Call Report as secured by a multifamily residential property.
	Home mortgage loan made in Indian country and guaranteed by the FHA.
	Home mortgage loan made in Indian country and guaranteed under the FHA's 203(b) Mortgage Insurance Program.
	Home mortgage loan made in Indian country and guaranteed under the FHA's Limited 203(k) Program.
	Home mortgage loan made in Indian country and guaranteed under the HUD's Indian Home Loan Guarantee Program (Section 184).
	Home mortgage loan made in Indian country and guaranteed by the USDA's Rural Housing Service.
	Home mortgage loan made in Indian country and guaranteed by the VA.
	Credit card to an individual in Indian country.
	Home equity line of credit extended in Indian country, such as for home improvement.

Proposed qualifying regulatory criteria	Description
	Non-credit card revolving credit line, such as for purchase of home appliances, to an individual in Indian country.
	Consumer loan made to an individual in Indian country for purposes other than purchasing an automobile, such as to fund unexpected medical expenses.
	Automobile loan to an individual in Indian country to purchase a car.
	Loan or line of credit of $2 million or less to a business in Indian country with gross annual revenues of any amount when classified on the bank's Call Report as a commercial and industrial loan.
	Loan or line of credit of $2 million or less to a business in Indian country with gross annual revenues of any amount when classified on the bank's Call Report as a loan secured by nonfarm nonresidential properties.
	Loan or line of credit of $2 million made in Indian country under the SBA Certified Development Company/504 Loan Program that covers 50 percent of the project's cost and is secured by a first lien on real property.
	Loan or line of credit of $2 million to a business in Indian country to make improvements to its manufacturing facility under the SBA 7(a) loan program.
	Loan or line of credit of $2 million to a business in Indian country to finance the purchase of machinery under the USDA's Rural Development Business and Industry Guarantee Loan Program.
	Loan or line of credit of $2 million or less to a farm in Indian country with gross annual revenues of any amount when classified on the bank's Call Report as a loan to finance agricultural production and other loans to farmers.
§§ 25.04(b)(3) and 345.04(b)(3)	*A small loan to a business located in a low- or moderate-income census tract; or*
	Loan of $100 thousand to a business with gross annual revenues of $1.3 million to purchase inventory for its business located in a moderate-income census tract.
	Loan of $1.5 million to a business with gross annual revenues of $10 million to expand its manufacturing facility located in a low-income census tract.
§§ 25.04(b)(4) and 345.04(b)(4)	*A small loan to a farm located in a low- or moderate-income census tract.*
	Loan of $250 thousand to purchase farm equipment for a family farm with gross annual revenues of $1.2 million located in a low-income census tract.
	Term loan of $2 million to refinance a construction loan used to expand the production facilities for a dairy farm with gross annual revenues of $15 million located in a moderate-income census tract.
§§ 25.04(c) and 345.04(c)	*Community development loans, community development investments, and community development services. A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:*
§§ 25.04(c)(1) and 345.04(c)(1)	*Affordable housing, which means:*
§§ 25.04(c)(1)(i) and 345.04(c)(1)(i)	*Rental housing:*
§§ 25.04(c)(1)(i)(A) and 345.04(c)(1)(i)(A)	*That is likely to partially or primarily benefit low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;*
	A loan to a non-profit organization for the purpose of providing affordable housing to LMI individuals where the median rents do not exceed 30 percent of 80 percent of the area median income.
	A loan to a for-profit business for the purpose of providing affordable housing to LMI individuals where the median rents do not exceed 30 percent of 80 percent of the area median income.
	A loan to a for-profit developer for construction of multi-family mixed-income rental housing, that partially benefits LMI individuals because 20 percent of the units will be offered at median rents that do not exceed 30 percent of 80 percent of the area median income.
	A loan to a non-profit developer to build multi-family rental housing guaranteed under the USDA's Section 538 Guaranteed Loan Program with all units offered at median rents that do not exceed 30 percent of 80 percent of the area median income.
	Public welfare investment, under 12 CFR part 24, that will use tax credits from the Federal Historic Tax Credit Program to finance the adaptive reuse and renovation of a hotel into rental units with median rents that will not exceed 30 percent of 80 percent of the area median income.
	A loan for a mixed-use property in an underserved area that will be used to help seasonal businesses provide affordable housing to seasonal LMI workers at rents that do not exceed 30 percent of 80 percent of the area median income.
	A loan to a for-profit developer for construction of multi-family mixed-income rental housing, with 60 percent of the units offered at median rents that do not exceed 30 percent of 80 percent of the area median income.
	Public welfare investment, under 12 CFR part 24, that will finance the company's production of cost-effective modular housing, which will be used to supply affordable housing units for rent to LMI individuals and families.
	An investment that supports the abatement of or remediation to correct lead-based paint, asbestos, mold, or radon that are present in a multi-family rental housing project with rents not greater than 30 percent of 80 percent of the area median.
§§ 25.04(c)(1)(i)(B) and 345.04(c)(1)(i)(B)	*That partially or primarily benefits low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;*
	Investment in a project where 30 percent of the housing units will be set aside as affordable to LMI individuals through local inclusionary zoning.

Proposed qualifying regulatory criteria	Description
	Loan to purchase a multifamily dwelling that will partially benefit LMI individuals by designating at least 40 percent of the units to renters who receive assistance under the U.S. Department of Housing and Urban Development's section 8 rental subsidy program.
	Public welfare investment, under 12 CFR part 24, that provides financing for the construction of a 102-unit rent-to-own affordable housing complex targeted to LMI individuals and families.
§§ 25.04(c)(1)(i)(C) and 345.04(c)(1)(i)(C)	*That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families;*
	Investment in a limited partnership to develop and operate a Federal Low-Income Housing Tax Credit (LIHTC) multi-family housing project.
	Public welfare investment, under 12 CFR part 24, to finance the conversion and rehabilitation of public housing using the HUD's Rental Assistance Demonstration Program that uses a section 8 project-based contract to make the units affordable to LMI individuals and families.
	A loan to a nursing home and assisted living facility that uses the HUD Section 232 loan guarantee and is defined by HUD as multifamily housing that primarily serves or assists LMI individuals or families.
	An investment in a ''green'' retrofit initiative as part of an explicit local government program used to maintain the affordability of rental housing for LMI individuals through energy efficient measures.
	Loan to facilitate the purchase of existing multifamily housing using a guarantee provided under the HUD Section 207/223(f) program to make the units affordable to LMI individuals and families.
	Loan to facilitate the substantial rehabilitation of multifamily rental housing for moderate-income families, elderly and the handicapped using a guarantee provided under the HUD Section 221(d)(4) mortgage insurance program to make the units affordable to LMI individuals and families.
	Loan to a Native American tribe to purchase land and construct infrastructure and affordable rental housing, as identified in the tribe's Indian Housing Plan, using a guarantee provided under the HUD Title VI Tribal Housing Activities Loan Guarantee Program to make the units affordable to LMI individuals and families.
	Loan to a non-profit sponsor to rehabilitate multifamily rental housing for elderly persons (62 or older) and/or persons with disabilities using a guarantee provided under the HUD Program Section 231 to make the units affordable to LMI individuals.
§§ 25.04(c)(1)(i)(D) and 345.04(c)(1)(i)(D)	*That partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or*
	An investment in a project in a high-cost area where 30 percent of the rental units are set aside as affordable to middle-income individuals through local inclusionary zoning.
	A loan to a non-profit to develop rental housing under a state tax credit program that supports workforce housing in high-cost areas where 40 percent of the units will be set-aside for middle-income individuals and families.
§§ 25.04(c)(1)(i)(E) and 345.04(c)(1)(i)(E)	*That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for middle-income individuals or families in high-cost areas; or*
	A loan to finance temporary rental housing for middle-income workers in a high-cost area in response to a local workforce housing program.
§§ 25.04(c)(1)(ii) and 345.04(c)(1)(ii)	*Owner-occupied housing purchased, refinanced, or improved by low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;*
	Investment in a mortgage-backed security (MBS) that is primarily secured by loans to LMI borrowers.
	Bank employees help to build a single-family home for a non-profit organization with an express purpose of providing affordable housing for purchase by LMI individuals or families.
	Down payment and closing cost assistance grants on home purchase loans for LMI borrowers.
§§ 25.04(c)(2) and 345.04(c)(2)	*Another bank's community development loan, community development investment, or community development service;*
	Bank employees volunteer to provide technical assistance to another bank to establish a loan program targeted to LMI individuals and families.
§§ 25.04(c)(3) and 345(c)(3)	*Businesses or Farms that meet the size-eligibility standards of the Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, or the Small Business Investment Company, as described 13 CFR part 107, by providing technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary;*
	A grant to a non-profit that provides technical assistance to small businesses that meet the stated size-eligibility standards.
	Loan to a non-profit entity that provides technical assistance to small businesses that meet the size-eligibility standards for an SBA Small Business Investment Company.
	Bank employees volunteer through a local Chamber of Commerce to lead a workshop that provides technical assistance to the chamber's small business members that meet the stated size-eligibility standards.
	Providing permanent office space rent-free at a branch for use by the local economic development organization that targets small business development, predominantly among start-up and micro-businesses that meet the stated size-eligibility standards.

Proposed qualifying regulatory criteria	Description
§§ 25.04(c)(4) and 345.04(c)(4)	*Community support services which means activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;*
	Public welfare investment, under 12 CFR part 24, in a fund that provides financing for a charter school that will primarily serve LMI children.
	Donation to a non-profit organization that provides transportation to medical treatments for LMI individuals.
	Grant to a non-profit organization that provides housing assistance and counseling to LMI immigrants residing in the United States.
	Providing mentoring/tutoring services to clients of a non-profit organization that serves LMI youth.
	Public welfare investment, under 12 CFR part 24, that supports a non-profit that provides general education degrees (GED) primarily to LMI individuals without a high school diploma.
	Loan to a job training center that primarily serves unemployed, LMI individuals.
	Volunteer service to serve meals at a homeless shelter.
	In-kind donation to a food pantry that provides services to unemployed, LMI families.
	Loan to acquire a child care facility that serves LMI residents of a low-income neighborhood.
	Volunteer service with a non-profit that provides income tax assistance programs for LMI individuals.
	A grant to a non-profit organization that runs a state-funded battered women's shelter for LMI individuals in an underserved area as part of a statewide program.
	A loan, investment, or service that supports an LMI-focused alcohol and drug recovery center.
	Grant to a drug rehabilitation center that primarily services low-income individuals.
	Loan to a legal assistance program for LMI individuals.
	Grant to an organization that provides resume writing services to LMI formerly incarcerated individuals.
	Loan to an acute care hospital facility using the HUD Section 242 Hospital Mortgage Insurance Program to provide affordable child care services for LMI individuals or families.
	Grant to support a program that provides eye glasses to low-income individuals.
	In-kind contribution of rent-free office space to a local food bank.
	Provision of technical assistance on financial matters to a non-profit organization that will apply for loans or grants under the Federal Home Loan Banks' (FHLBanks) Affordable Housing Program, specifically by serving on a loan review committee, assisting in marketing financial services, and furnishing financial services training for staff and management.
§§ 25.04(c)(5) and 345(c)(5)	*Essential community facilities that partially or primarily benefit or serve:*
§§ 25.04(c)(5)(i) and 345.04(c)(5)(i)	*Low- or moderate-income individuals or families; or*
	A construction loan to improve a hospital that is located in a middle-income census tract adjacent to a low-income census tract that partially benefits LMI individuals who will utilize hospital services.
	Investment in a municipal bond to fund construction of a health center that will primarily serve residents of a moderate-income neighborhood.
	Purchase of a local municipal bond, the proceeds of which will be used to construct a new high school that will partially serve students from LMI families.
	Public welfare investment, under 12 CFR part 24, in a fund that finances supportive housing projects for the chronically homeless and other public funding, such as state-issued tax-exempt bonds, HUD's Supportive Housing Program or section 8 Project-Based Rental Assistance, the FHLBanks' Affordable Housing Program, and LIHTCs.
§§ 25.04(c)(5)(ii) and 345.04(c)(5)(ii)	*Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;*
	Loan to construct a new fire station located in Indian country.
	Loan of $8 million to a company to build a health clinic in an underserved area, using the USDA's Community Facilities Guarantee Loan Program.
	Loan to build a police station in a distressed area.
	Purchase of a local municipal bond with a purpose consistent with a local disaster recovery plan, the proceeds of which will be used to construct a new high school in a disaster area.
	Loan to improve a hospital in a distressed area that serves the entire community, including LMI individuals.
	Investment in a fund that finances community facilities in Indian country.
§§ 25.04(c)(6) and 345.04(c)(6)	*Essential infrastructure that benefits or serves:*
§§ 25.04(c)(6)(i) and 345.04(c)(6)(i)	*Low- or moderate-income individuals or families; or*
	Loan to finance construction of a road in a rural community that provides LMI residents of the area access to employment centers outside of the area.
	Investment in a local cooperative to develop broadband infrastructure and expand access to LMI residents in the area.
	Investment in a local municipal bond to improve city-wide water and waste water systems with benefit to all residents, including LMI residents.
	Loan for infrastructure improvements, including upgrading roads, water supply and sewer services, to a mobile home park that primarily rents space to LMI residents.
§§ 25.04(c)(6)(ii) and 345.04(c)(6)(ii)	*Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;*
	Public welfare investment, under 12 CFR part 24, that will finance construction of a solar energy facility that uses federal renewable energy tax credits and will provide access to reduced cost electrical utilities to LMI census tracts.

Proposed qualifying regulatory criteria	Description
	Investment in a local municipal bond to refurbish a bridge that connects a low-income neighborhood with essential services without which residents would otherwise not have access to those services.
	Investment in a state issued bond to reconstruct a tunnel in a disaster area, consistent with the area's disaster recovery plan.
	Purchase of a local municipal bond, the proceeds of which will be used to upgrade a water pipeline that serves an underserved area.
	Loan to a company to build a new flood control system as identified in the community's disaster recovery plan, such as a levee or storm drain that serves the disaster area.
	Public welfare investment, under 12 CFR part 24, to finance the construction of a broadband network to develop reliable internet access in an LMI census tract.
	Investment in a Special City Taxing District Bond with the purpose of renovating city sidewalks in a distressed area to comply with the Americans with Disabilities Act.
§§ 25.04(c)(7) and 345.04(c)(7)	*A family farm's:*
§§ 25.04(c)(7)(i) and 345.04(c)(7)(i)	*Purchase or lease of farm land, equipment, and other farm-related inputs;*
	Loan to a family-owned corn and wheat farm with gross annual revenues of $10 million to purchase a tractor.
	Loan to a family-owned peanut farm with gross annual revenues of $255 thousand to purchase additional land to increase production.
	Loan to a family-owned vineyard with gross annual revenues of $4 million to purchase additional acreage.
§§ 25.04(c)(7)(ii) and 345.04(c)(7)(ii)	*Receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or*
	Grant to a non-profit organization that provides technical assistance to family farms.
§§ 25.04(c)(7)(iii) and 345.04(c)(7)(iii)	*Sale and trade of family farm products;*
	Loan to a family-owned vegetable (misc. crop) farm with gross annual revenues of $500 thousand to construct a building from which to sell produce.
	Loan to a family-owned aquaculture farm with gross annual revenues of $3 million to market and sell their products statewide.
§§ 25.04(c)(8) and 345.04(c)(8)	*Federal, state, local, or tribal government programs, projects, or initiatives that:*
§§ 25.04(c)(8)(i) and 345.04(c)(8)(i)	*Partially or primarily benefit low- or moderate-income individuals or families;*
	Grant to a non-profit organization to provide a local government sponsored dress for success program for homeless women.
	A loan to a non-profit organization to provide a state government sponsored after-school program for students from LMI families.
§§ 25.04(c)(8)(ii) and 345.04(c)(8)(ii)	*Partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives; or*
	Volunteer service providing guidance to small businesses on how to create financial statements under a state program to support statewide business development.
	Investment in a SBA Guaranteed Loan Pool Certificate.
	Loan to a small business that is a state-certified Historically Underutilized Business.
	Loan to a small business to purchase real estate related to a New Markets Tax Credit project, as provided for in 26 U.S.C. 45D.
	Grant to a non-profit that provides financing for small farms under a federal program to encourage new farm development.
	Loan to a small business incubator that primarily benefits small businesses by providing supportive services to business start-ups and that is funded in part under a state-wide CD initiative.
	Loan of $3 million to a small business under a tribal government loan guarantee program.
§§ 25.04(c)(8)(iii) and 345.04(c)(8)(iii)	*Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country;*
	Grant to a non-profit organization that receives funds from a statewide program to revitalize communities in Indian country.
	Contribution of other real estate owned (OREO) property to a local government-owned land bank whose primary purpose is consistent with a government revitalization plan that benefits LMI census tracts.
	Financing to support cleanup of industrial brownfields in a distressed area as part of city-sponsored revitalization program.
	Investment in a Tax Increment Financing (TIF) bond to finance infrastructure improvements consistent with a government revitalization plan in a distressed area.
	Loan through a state program to a company to purchase and replace equipment as well as rebuild the manufacturing facility that was damaged by flooding in a federally designated disaster area and supported by the community's disaster recovery plan.
§§ 25.04(c)(9) and 345.04(c)(9)	*Financial literacy programs or education or homebuyer counseling;*
	Financial counseling by bank employees to participants in a workforce development program.
	Bank employees conduct first-time homebuyer counseling program for bank customers.
	Bank employees teach financial education or literacy curricula at local community centers.
	Bank employees delivering the FDIC's Money Smart Program curriculum to residents at a senior living facility.
	Grant to a non-profit organization that provides financial literacy courses for a foreclosure prevention program.
	Activities supporting "train the trainer" programs that are designed to train teachers to provide financial literacy education to their students.

Proposed qualifying regulatory criteria	Description
	In-kind donation of computer equipment to a non-profit that conducts personal money management courses for LMI individuals.
	Bank employees provide financial education in connection with a school savings program.
	Loan to a non-profit credit counseling organization that conducts personal money management courses.
	Donation to an organization that conducts elder financial abuse and identity theft prevention programs.
	An in-kind donation of computer equipment to a non-profit that provides financial literacy courses.
	Bank employees assist in the preparation of tax filings under the Internal Revenue Service's Volunteer Income Tax Assistance Program.
	Providing homebuyer education to potential buyers of single-family housing developed under a state program for middle-income individuals and families in high-cost areas.
	Volunteer service to open savings accounts offered through a school-based banking program to students of a K–12 school that is located in and serves residents of an LMI census tract.
§§ 25.04(c)(10) and 345.04(c)(10)	*Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;*
	Loan to develop housing in Indian Country that is guaranteed under HUD's Title VI Loan Guarantee Program.
	Loan to construct mixed-income housing under a tribal-government sponsored program, 30% of which will be set aside for middle-income teachers in Indian country.
	Loan to a for-profit developer to construct rental housing in Indian country.
§§ 25.04(c)(11) and 345.04(c)(11)	*Qualified opportunity funds, as defined in 26 U.S.C. 1400Z–2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z–1(a);*
	Investment in a qualified opportunity fund, established to finance construction of a new manufacturing facility in an opportunity zone that is also an LMI census tract.
	Investment in a qualified opportunity fund, established to finance renovation of a vacant building into a cultural arts facility, including loft space for artists and a community theater, in an opportunity zone that is also an LMI census tract.
	Investment in a qualified opportunity fund, established to finance the rehabilitation of an acute care hospital facility, including the purchase of new medical equipment, in an opportunity zone that is also an LMI census tract.
	Investment in a qualified opportunity fund, established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract.
§§ 25.04(c)(12) and 345.04(c)(12)	*A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or*
	An investment in a New Markets Venture Capital company that finances businesses that meet the SBA's size standards used to define small business concerns.
	Public welfare investment, under 12 CFR part 24, to a qualified Community Development Entity that will provide financing for a food market to build a 180,000 square foot refrigerated warehouse and food distribution facility.
	An investment in a SBA Small Business Investment Company fund to finance businesses that meet the SBIC size standards.
	An investment in a USDA Rural Business Investment Company to fund businesses and farms that meet the RBIC size standards.
	An investment in a New Markets Tax Credit-eligible Community Development Entity to fund a mixed-use project that will include affordable housing for LMI individuals and families and retail space for small businesses.
§§ 25.04(c)(13) and 345.04(c)(13)	*Ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.*
	Bank employee time spent facilitating a loan participation with a minority depository institution, which will help the minority depository institution to meet the credit needs of its local community.
	Bank employees provide training to CDFI staff on underwriting small farm loans to help the CDFI expand its product offerings to its community.
	Bank provides in-kind services in the form of free or discounted data processing systems that aids a minority depository institution in serving its customers.
	Bank donates branch space on a rent-free basis to a low-income credit union to better serve the credit union's customers.
	Bank certificate of deposit in a minority depository institution.
	Loan to enable a minority- or women-owned depository institution or low-income credit union, or CDFI to partner with schools or universities to offer financial literacy education to members of its local communities in which such institutions are chartered.

VI. Regulatory Analysis

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the agencies are publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The agencies are separately publishing initial regulatory flexibility analyses for the proposal as set forth in this section. The agencies welcome comment on all aspects of the initial regulatory flexibility analyses. Final regulatory flexibility analyses will be conducted after consideration of comments received during the public comment period.

OCC:

A. Reasons Why the Proposal Is Being Considered by the Agencies; Statement of the Objectives of the Proposal; and Legal Basis for Proposal

The legal basis for the proposed rule is the CRA, 12 U.S.C. 2901 *et seq.,* which charges the Federal banking agencies to encourage the institutions they supervise to help meet the credit needs of their local communities in a manner that is safe and sound. As discussed in the Supplementary Information section above, the agencies are proposing to revise their regulations implementing the CRA to (1) clarify and expand the types of activities that qualify for CRA credit; (2) update and expand the areas in which qualifying activities receive credit; (3) provide a more objective and transparent method to measure and evaluate CRA performance; and (4) revise data collection, recordkeeping, and reporting requirements to improve consistency.

B. Small Entities Affected by the Proposal

Small Business Administration regulations define ''small entities,'' for banking purposes, as entities with total assets of $600 million or less.[65] The OCC currently supervises approximately 782 small entities. The proposal would affect approximately 749 of those entities.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements of Proposal

The proposed rule sets forth new qualifying activities criteria, assessment area delineation requirements, general performance standards, and data collection, recordkeeping, and recording requirements. The proposal would exempt banks with assets of $500 million or less in each of the prior four quarters (small banks) from the general performance standards. These banks would be required to comply with the current CRA small bank performance standards, new qualifying activities criteria, new assessment area delineations, and new data collection and recordkeeping requirements related to deposits. The proposal would permit these small banks to opt in to the general performance standards, which would require them to comply with all of the new data collection, recordkeeping, and reporting requirements.

To determine if the proposed rule would have a significant economic impact on small entities, the OCC compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small entity. If the estimated annual cost was greater than 2.5 percent of total noninterest expense or five percent of annual salaries and employee benefits, the OCC classified the impact as significant. Based on these thresholds, the OCC concluded for purposes of this initial regulatory flexibility analysis that the proposed rule would result in a significant economic impact on a substantial number of small entities. Specifically, if all of the small banks that the proposal would exempt operated under the small bank performance standards, then the proposal would have a significant economic impact of approximately $36 million on 72 small entities, which is a substantial number of small entities. If all of the small banks the proposal would exempt opted in to the general performance standards, then the proposal would have a significant economic impact of approximately $375 million on 738 small entities, which is a substantial number of small entities.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The OCC believes that no Federal rules duplicate, overlap, or conflict with the proposed rule.

E. Discussion of Significant Alternatives to Proposal

The agencies have sought to incorporate flexibility into the proposed rule and lessen burden and complexity for smaller banking entities wherever possible, consistent with safety and soundness and other applicable laws. In particular, as noted above, the proposal would allow small banks to operate under the current CRA small bank performance standards and would require compliance with only the new qualifying activities criteria, assessment area delineation requirements, and data collection and recordkeeping requirements related to deposits. The new assessment area delineation requirements may not increase the compliance burden as banks may be able to demonstrate that more than 50 percent of their retail domestic deposits fall within their facility-based assessment area(s). Also, the data collection and recordkeeping requirements related to deposits would be limited to data that small banks, for the most part, already collect and maintain.

For the small banking entities that have assets between $500 and $600 million and small banks that opt in to the general performance standards, the proposal would reduce the compliance burden of the final rule by including a transition period with different compliance dates based on asset size after the effective date. This transition period would allow for banks to revise their systems for data collection, maintenance, and reporting and to set up processes for calculating their CRA evaluation measures and determining their presumptive ratings.

The agencies request comment on potential options for simplifying the rule and reducing burden for small banks, including whether the threshold for the small bank exemption should be set at $500 million and whether the transition period is sufficient time for establishing the necessary systems of operation.

FDIC:

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rule, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposal on small entities.[66] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets less than or equal to $600 million.[67] Generally, the FDIC considers

[65] *See* 13 CFR 121.201 (Sector 52, Subsector 522).

[66] 5 U.S.C. 601 *et seq.*

[67] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial

Continued

a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Some expected effects of the proposed rule are difficult to assess or accurately quantify with currently available information, nevertheless the FDIC believes that the proposed rule will have a significant economic impact on a substantial number of small entities and has included an Initial Regulatory Flexibility Act Analysis in this section.

Reasons Why This Action Is Being Considered

As discussed in Section I. of the **SUPPLEMENTARY INFORMATION** of this proposed rule, over the past two decades, technology and the expansion of interstate banking has transformed the financial services industry and how banking services are delivered and consumed. These changes affect all banks, regardless of size or location, and are most evident in banks that have a limited physical presence or that rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities are not solely identifiable by the areas that surround their physical locations. The Federal banking agencies have also gained a greater understanding of communities' needs for lending and investment, such as the need for community development (CD) investments and loans with maturities longer than the typical CRA evaluation period. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their CD loans to the length of a CRA evaluation period. Additionally, recognizing the need for modernization, the Federal banking agencies began the effort to assess and update the CRA regulatory framework in 2018 by working together on an Advance Notice of Proposed Rulemaking (ANPR). Generally, commenters supported making amendments to the CRA in order to make it less inconsistent, opaque, and complex.

Policy Objectives

As previously discussed in Section I. of the **SUPPLEMENTARY INFORMATION** of this proposed rule, in response to this feedback, the agencies propose to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the proposal would clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more transparent and objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. Revisions that reflect these objectives would provide clarity and visibility for all stakeholders on how a bank's CRA performance is evaluated and the level of CRA activities banks conduct. These changes also would encourage banks to serve their entire communities, including LMI neighborhoods, more effectively through a broader range of CRA activities.

Legal Basis

The FDIC is issuing this proposed rule under the authorities granted to it under the Community Reinvestment Act of 1977. For a more extensive discussion on the legal basis of the proposed rule, please refer to Section I. of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

Description of the Rule

The proposal would (1) establish clear criteria for the type of activities that qualify for CRA credit, which generally would include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA, but may not qualify under the current CRA framework; (2) require the agencies to publish periodically a non-exhaustive, illustrative list of examples of qualifying activities; and (3) establish a straightforward and transparent process for stakeholders to seek agency confirmation that an activity is a qualifying activity.[68] In addition to providing transparency, the proposed qualifying activities criteria would expand the types of activities that qualify for CRA credit to recognize that some banks are currently serving community needs in a manner that is consistent with the statutory purpose of CRA but are not receiving CRA credit for those activities. The proposal would expand where CRA activity counts to help banks meet the needs of their entire communities, including LMI neighborhoods. To ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and conduct a substantial portion of their lending activity, banks would continue to be required to delineate assessment areas around their main office, branches, or non-branch deposit-taking facilities as well as the surrounding areas where banks have originated or purchased a substantial portion of their loans. These areas would be identified as ''facility-based'' assessment areas. In addition, to recognize the evolution of modern banking (including the emergence of internet banks) and in conformity with the CRA's intent to ensure that banks help meet credit needs where they collect deposits,[69] the proposed rule would require banks to delineate additional, non-overlapping ''deposit-based'' assessment areas where they have significant concentrations of retail domestic deposits (regardless of physical presence).

Consistent with the current CRA framework, the proposed rule would include different performance standards applicable to banks of different sizes. Small banks, as defined under the proposed rule, would continue to be evaluated under the small bank performance standards currently applicable to small banks that are not intermediate small banks.[70] The proposed rule also would establish new general performance standards to evaluate other banks' CRA activities and the CRA activities of small banks that opt into these standards. The general performance standards would assess two fundamental components of a bank's CRA performance: (1) The appropriate distribution (*i.e.,* number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies in a community through the application of tests evaluating a bank's distribution of retail lending; and (2) the impact of a bank's qualifying activities, measured

statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[68] The agencies are proposing to retain for certain banks the small bank performance standards applicable to small banks that are not intermediate small banks in the current regulations. 12 CFR 25.26; 12 CFR 195.26; and 12 CFR 345.26. The agencies intend for these standards to be applied consistent with their treatment under the current regulation except as discussed below.

[69] *See, e.g.,* 123 Cong. Rec. 17630 (1977) (statement of Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

[70] The proposed rule would define a small bank as a bank that had assets of $500 million or less in each of the previous four calendar quarters.

by a bank's *CRA evaluation measure,* which includes the quantified value [71] of a bank's qualifying activities *divided by* a bank's retail domestic deposits plus a measure of branch distribution in specified areas of need.

For a more extensive description of the proposed rule, please refer to Section II. of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

Small Entities Affected

The FDIC supervises 3,424 depository institutions, of which 2,665 are defined as small institutions by the terms of the RFA.[72] The proposed rule would affect all FDIC-supervised institutions, therefore the FDIC estimates that the proposed rule would affect 2,665 small, FDIC-supervised institutions. Of the 2,665 small, FDIC-supervised institutions, 2,526 currently report total consolidated assets of less than $500 million. Therefore, the FDIC estimates that 2,526 small, FDIC-supervised institutions would be subject to the small bank performance standards of the proposed rule. Additionally, the FDIC estimated that 139 small, FDIC-supervised institutions would be subject to the new general performance standards of the proposed rule. However, because small, FDIC-supervised institutions with less than $500 million in total consolidated assets have the option of adopting the new general performance standards of the proposed rule, the number of small, FDIC-supervised institutions who adopt the new general performance standards might be greater than the estimated amount. It is difficult to estimate this aspect of the proposed rule with the information currently available to the FDIC, because such estimates would depend on the present and future financial conditions, activities, and management decision of affected institutions.

Expected Effects

The new general performance standards for some small, FDIC-insured institutions in the proposed rule is likely to benefit covered institutions by establishing a more objective, clear, and consistent metric by which a covered institution is evaluated. If the proposed general performance standards are more stringent for some institutions than the current parameters, the proposed rule could pose costs for covered institutions by potentially reducing their CRA examination rating. If the proposed general performance standards are less stringent for some institutions than the current parameters, the proposed rule could benefit covered institutions by potentially increasing their CRA examination rating. It is difficult to accurately quantify these aspects of the proposed rule with the information currently available to the FDIC.

The publicly available list of examples of qualifying activities should benefit small, covered institutions and borrowers by establishing a reference for qualifying activities. Additionally, the proposed establishment of the list and an optional process through which FDIC-insured institutions and interested third parties can seek confirmation of a particular activity and have it added to the list, will create additional compliance burden. However, the FDIC believes that small, FDIC-insured institutions and interested third parties will only incur such a burden if they believe that the benefits outweigh the costs.

Establishing a transparent methodology for calculating qualifying activities values should benefit small, covered institutions by enabling them to more effectively manage their CRA activities and compliance. Additionally, to the extent that the qualifying activities value calculation methodology overweighs some activities relative to others, the proposed rule is likely to benefit certain activities and may lead to changes in the distribution of qualifying activities by some small, covered institutions.

The proposed rule amends the calculation of qualified loans and CD investments activities from the total balance just prior to a CRA examination, to average month-end outstanding amount on a bank's balance sheet. This aspect of the proposed rule is likely to disincentivize the acquisition of qualifying activities that serve only to boost the assessed activities for small, FDIC-supervised institutions just prior to a CRA evaluation. This amendment to the calculation of these qualified activities is likely to benefit borrowers, as covered institutions seek to develop sustained efforts to conduct qualifying activities.

The proposed rule augments the current assessment area designation methodology by adding areas where a bank has a significant portion of its retail domestic deposits, outside of its facility-based assessment areas. To the extent that small, covered institutions were already conducting qualifying activities in these areas, this aspect of the proposed rule will benefit small, covered institutions by crediting this activity towards their CRA assessment. However, to the extent that small, covered institutions were not already conducting qualifying activities in these areas, this aspect of the proposed rule would pose costs for covered institutions by compelling them to start conducting qualifying activities in these areas or negatively affecting their CRA assessment. It is difficult to accurately quantify these aspects of the proposed rule with the information currently available to the FDIC. Further, to the extent that small, covered institutions were not already conducting qualifying activities in these areas, this aspect of the proposed rule would benefit borrowers by incentivizing small, covered institutions to focus on meeting their financial service needs.

As discussed previously, the proposed rule maintains the small bank performance standards, however the rule amends the definition of ''small bank'' from total consolidated assets less than $1.284 billion to $500 million or less. Therefore, this aspect of the proposed rule may increase compliance costs for the 139 intermediate-small banks, FDIC-supervised institutions with total consolidated assets less than $1.284 billion, but greater than $500 million. Additionally, banks that will be subject to the small bank performance standards under the proposed rule will utilize the revised definition of qualifying activities and assessment areas. The expected effects of these aspects of the proposed rule were previously addressed in this RFA section.

As discussed previously, the proposed rule may increase compliance costs for all small, FDIC-insured institutions. The FDIC estimates that, if adopted, the recordkeeping, reporting, and disclosure burden for small, FDIC-supervised institutions associated with the Community Reinvestment Act would be 1,030 hours per year for entities subject to the small bank performance standards, and 7,361 hours per year for entities subject to the new general performance standards. Assuming that each institution utilizes labor from Executives and Managers, Lawyers, Compliance Officers, IT Specialists, Financial Analysts, and Clerical Workers in fixed proportion, the FDIC estimates that the complying with the CRA would pose $93,000 in annual costs for small, FDIC-supervised entities subject to the small bank performance standards, and $665,802.45

[71] The quantified value is the dollar value of the qualifying activity multiplied by applicable multipliers and percentages of partial benefit to the intended population or area. The specific quantified value for the different types of qualifying activities is discussed later in the preamble and explained in the regulation.

[72] Call Report, June 30, 2019. Nine insured domestic branches of foreign banks are excluded from the count of FDIC-insured depository institutions. These branches of foreign banks are not ''small entities'' for purposes of the RFA.

in annual costs for small, FDIC-supervised entities subject to the new general performance standards. Additionally, the proposed rule redefines loans to small business as loans with an origination balance of $2 million or less, as opposed to the current threshold of $1 million or less. Small, FDIC-insured institutions might incur some regulatory costs associated with making the necessary changes to their systems in order to comply with the new definition.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposed rule and any other federal rule.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

Paperwork Reduction Act of 1995

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The agencies reviewed the proposed rule and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control Nos. 1557–0160 and 3064–0092. The agencies have submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320).

Current Actions

Under the proposed rule:

- Banks may request that the agency confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form. 12 CFR __.05(c)(1).
- A bank must delineate one or more assessment areas within which the agency evaluates the bank's record of helping to meet the credit needs of its community. 12 CFR __.08.
- Banks that are not small banks must submit information on the Performance Context Form. 12 CFR __.14(c).
- A bank must submit a strategic plan if the bank: (1) Would otherwise be evaluated under § __.12 and does not maintain retail domestic deposits on-balance sheet or (2) is a small bank that does not originate retail loans. A bank not required to submit a plan may do so. 12 CFR __.16.
- Banks evaluated under the general performance standards in § __.12 and banks evaluated under a strategic plan under § __.16, unless otherwise determined in writing by the agency, must collect and maintain the information required by 12 CFR __.19. 12 CFR __.19.
- Small banks must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor. 12 CFR __.20.
- Banks must keep the data collected under § __.19 and § __.20 in machine readable form (as prescribed by the agency). 12 CFR __.22.
- Banks evaluated under the general performance standards in § __.12 and banks evaluated under a strategic plan under § __.16, unless otherwise determined in writing by the agency, must report the information required by 12 CFR __.23. 12 CFR __.23.
- Banks must maintain a public file that includes: All written comments and responses; a copy of the public section of the bank's or savings association's most recent CRA performance evaluation; a list of the bank's branches, their street addresses, and census tracts; a list of the branches opened or closed, their street addresses, and geographies; a list of services offered; a map of each assessment area; and any other information the bank chooses. Banks with strategic plans must include a copy of the plan. Banks with less than satisfactory ratings must include a description of their current efforts to improve their performance in helping to meet the credit needs of their entire community. Banks must make all of this information available to the public. This information must be current as of April 1 of each year. 12 CFR __.25.

OCC

Title of Information Collection: Community Reinvestment Act.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 1,069.

Total estimated annual burden: 3,401,393 hours.

FDIC

Title of Information Collection: Community Reinvestment Act.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 3,390.

Total estimated annual burden: 8,702,163 hours.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $154 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that this proposed rule is likely to result in the expenditure by the private sector of $154 million or more. Therefore, the OCC has prepared a budgetary impact

analysis and identified and considered alternative approaches. The full text of the OCC's analyses under the Unfunded Mandates Act is available at: *http://www.regulations.gov,* Docket ID OCC–2018–0008.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the agencies must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The OCC invites comments that will inform its consideration of RCDRIA.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

Authority and Issuance

For the reasons discussed in the preamble, and under the authority of 12 U.S.C. 93a, the Office of the Comptroller of the Currency proposes to amend 12 CFR part 25 and remove part 195 as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

■ 2. Revise subparts A through D to read as follows:

Subpart A—General

Sec.
25.01 Authority, purposes, and scope.
25.02 Effect of CRA performance on applications.
25.03 Definitions.

Subpart B—Qualifying Activities

25.04 Qualifying activities criteria.
25.05 Qualifying activities confirmation and illustrative list.
25.06 Qualifying activities quantification.
25.07 Qualifying activities value.

Subpart C—Assessment Area

25.08 Assessment area.

Subpart D—Performance Evaluations

25.09 Performance standards and ratings, in general.
25.10 CRA evaluation measure.
25.11 Retail lending distribution tests.
25.12 General performance standards and presumptive rating.
25.13 Small bank performance standards.
25.14 Consideration of performance context.
25.15 Discriminatory and other illegal credit practices.
25.16 Strategic plan.
25.17 Assigned ratings.
25.18 State/multistate metropolitan statistical area assigned rating.

Subpart A—General

§ 25.01 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), Congress required each appropriate Federal financial supervisory agency to assess an institution's record of meeting the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of such institution, and take that record into account in its evaluation of an application for a deposit facility by such institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* This part applies to all banks as defined in § 25.03 except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) *Federal branches and agencies*—(i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain exempt banks.* This part does not apply to banks that do not perform commercial or retail banking services by granting credit or offering credit-related products or services to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

(4) *Compliance Dates*—(i) *Banks other than small banks*—(A) Banks that are not small banks must comply with the following requirements of this part on the following dates:

(1) One year after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.19, and 25.22; and

(2) Two years after the effective date of the final rule for the reporting requirements in § 25.23.

(B) Banks that are not small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(i)(A)(*2*) of this section, including any extensions approved by the OCC.

(ii) *Small banks*—(A) Small banks must comply with the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.20, and 25.22 one year after the effective date of this rule.

(B) Small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the compliance date in paragraph (c)(4)(ii)(A) of this section, including any extensions approved by the OCC.

(iii) *Small banks that opt into the general performance standards in § 25.12 as of the effective date of this rule and banks that no longer meet the small bank definition*—(A) Small banks that opt into the general performance standards in § 25.12 as of the effective date of this rule pursuant to § 25.09(b) and banks that no longer meet the small bank definition must comply with the following requirements on the following dates:

(1) Two years after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.19, and 25.22; and

(2) Three years after the effective date of the final rule for the reporting requirements in § 25.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iii)(A)(*2*) of this section, including any extensions approved by the OCC.

(iv) *Small banks that opt into the general performance standards in § 25.12 after the effective date of the final rule*—(A) Small banks that opt into the general performance standards in § 25.12 after the effective date of the final rule pursuant to § 25.09(b) must comply with the following requirements on the following dates:

(1) One year after the bank opts in for the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.19, and 25.22; and

(2) Two years after the bank opts in for the reporting requirements in § 25.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iv)(A)(*2*) of this section, including any extensions approved by the OCC.

§ 25.02 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch or non-branch deposit taking facility;

(2) The relocation of the main office or a domestic branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution;

(4) The conversion of an insured depository institution to a national bank charter;

(5) A savings association charter; and

(6) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank or a Federal thrift charter must submit with its application a description of how it will meet its CRA objectives, if applicable. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the same meaning as this term is given in 12 U.S.C. 1813.

§ 25.03 Definitions.

For purposes of this part, the following definitions apply:

Activity means a loan, investment, or service by a bank.

Affiliate has the same meaning as this term is given in Regulation W, 12 CFR 223.2(a) and (b), as of the effective date of this rule but applies to member and non-member banks.

Agencies means the OCC and the Federal Deposit Insurance Corporation (FDIC).

Area median income means:

(1) The median family income for the metropolitan statistical area, if a person or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

Assessment area means a geographic area delineated in accordance with § 25.08.

Average means the statistical mean.

Bank means a national bank (including a Federal branch as defined in part 28 of this chapter) or a savings association, the deposits of which are insured by the FDIC pursuant to Chapter 16 of Title 12, as described in 12 U.S.C. 1813(c)(2), except as provided in § 25.01(c)(3).

Branch means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or non-profit organization. The term ''branch'' only includes a ''domestic branch'' as that term is defined in section 3(o) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(o)).

Call Report means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

Community Development Financial Institution has the same meaning as this term is given in 12 U.S.C. 4702(5).

Community development investment means a lawful investment, membership share, deposit, legally-binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the criteria of § 25.04(c).

Community development loan means a loan, line of credit, or contingent commitment to lend that meets the criteria of § 25.04(c).

Community development services means bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 25.04(c) or supporting activities that meet the criteria of § 25.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

Compensation means the Bureau of Labor Statistics calculation of the hourly wage for that type of work engaged in by a bank employee in the course of conducting community development services.

Consumer loan means a loan reported on the Call Report, Schedule RC–C,

Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures, which include the following product lines:

(1) *Credit card,* which is an extension of credit to an individual for household, family, and other personal expenditures arising from credit cards;

(2) *Other revolving credit plan,* which is an extension of credit to an individual for household, family, and other personal expenditures arising from prearranged overdraft plans and other revolving credit plans not accessed by credit cards;

(3) *Automobile loan,* which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(4) *Other consumer loan,* which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a ''loan secured by real estate'' and other than those for purchasing or carrying securities), including *low-cost education loans,* which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

Contingent commitment to lend means a legally-binding commitment to extend credit in instances where another bank initially funded, or committed to fund, a project but cannot, for financial or legal reasons, advance unanticipated additional funds necessary to complete the project.

Distressed area means a middle-income census tract identified by the agencies that meets one or more of the following conditions:

(1) An unemployment rate of at least 1.5 times the national average,

(2) A poverty rate of 20 percent or more, or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

Essential community facility means a public facility, including but not limited to a school, library, park, hospital and health care facility, and public safety facility.

Essential infrastructure means:

(1) Public infrastructure, including but not limited to public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

Family farm has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

Financing means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

High-cost area means any county in which the percentage of households who have monthly housing costs greater than 30 percent of their monthly income is greater than 40 percent.

Home mortgage loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1–4 family residential construction loans;

(2) Item 1.c Loans secured by 1–4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multifamily (5 or more) residential properties.

Income levels are:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a census tract.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in the case of a census tract.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in the case of a census tract.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a census tract.

Indian country has the same meaning as this term is given in 18 U.S.C. 1151.

Low-income credit union has the same meaning as this term is given in 12 CFR 701.34.

Major retail lending product line means a bank's retail lending product line that composes at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period.

Metropolitan division has the same meaning as this term is given by the Director of the Office of Management and Budget.

Metropolitan statistical area has the same meaning as this term is given by the Director of the Office of Management and Budget.

Military bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

Minority depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(1).

Monetary or in-kind donation means:

(1) A grant, monetary contribution, or monetary donation, or

(2) A contribution of goods, commodities, or other non-monetary resources.

Non-branch deposit-taking facility means a banking facility other than a branch owned or operated by, or operated exclusively for, the bank that is authorized to take deposits that is located in any state or territory of the United States of America.

Nonmetropolitan area means any area that is not located in a metropolitan statistical area.

Partially benefits means 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

Primarily benefits means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example, in a prospectus, loan proposal, or community action plan.

Qualifying activity means an activity that helps meet the credit needs of a bank's entire community, including low- and moderate-income individuals

and communities, in accordance with § 25.04.

Qualifying loan means a retail loan that meets the criteria in § 25.04(b) or a community development loan that meets the criteria in § 25.04(c).

Retail domestic deposit means a ''deposit'' as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g)).

Retail loan means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

Retail lending product line means a:

(1) Home mortgage loan product line, which includes all home mortgage loans;

(2) Small loan to a business product line, which includes all small loans to businesses;

(3) Small loan to a farm product line, which includes all small loans to farms; or

(4) Consumer lending product line, which includes:

(ii) An automobile loan product line;

(iii) A credit card product line;

(iv) An other revolving credit plan product line; or

(v) An other consumer loan product line.

Small bank—(1) *Definition.* Small bank means a bank that:

(i) Had assets of $500 million or less in each of the previous four calendar quarters; or

(ii) Was a small bank as of the close of the calendar quarter immediately preceding the close of the last calendar quarter and did not have assets of greater than $500 million as of the close of each of the past four calendar quarters.

(2) *Adjustment.* The dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest $100,000.

Small business means a business that has gross annual revenues of no greater than $2 million. The OCC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Small farm means a farm with gross annual revenues of no greater than $2 million. The OCC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Small loan to a business means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than $2 million. The OCC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Small loan to a farm means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than $2 million. The OCC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Underserved area means a middle-income census tract:

(1) Identified by the agencies as meeting the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The agencies will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the agencies as:

(i) Not having a branch of any bank within:

(A) 2 miles of the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles of the center of the census tract if it is a mixed census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles of the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles of the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

Women's depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(2).

Subpart B—Qualifying Activities

§ 25.04 Qualifying activities criteria.

(a) *General.* Retail loans, community development loans, community development investments, and community development services that help meet the credit needs of a bank's entire community, including low- and moderate-income communities, are qualifying activities if they meet the criteria in this section at the time the activity is originated, made, or conducted. If the activity is subsequently purchased by another bank, it is a qualifying activity if it meets the criteria in this section at the time of purchase.

(b) *Retail loans.* A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) Small business; or

(iii) Small farm;

(2) Located in Indian country;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services.* A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing:

(A) That is likely to partially or primarily benefit low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That partially or primarily benefits low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families;

(D) That partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by

a federal, state, local, or tribal government; or

(E) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for middle-income individuals or families in high-cost areas; or

(ii) Owner-occupied housing purchased, refinanced, or improved by low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Businesses or Farms that meet the size-eligibility standards of the Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, or the Small Business Investment Company, as described in 13 CFR part 107, by providing technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary;

(4) Community support services which means activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(5) Essential community facilities that partially or primarily benefit or serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(6) Essential infrastructure that benefits or serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs;

(ii) Receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily benefit low- or moderate-income individuals or families;

(ii) Partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives; or

(iii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z–2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z–1(a);

(12) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(13) Ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

§ 25.05 Qualifying activities confirmation and illustrative list.

(a) *Qualifying activities list.* The OCC maintains a publicly available illustrative list at *www.occ.gov* of non-exhaustive examples of qualifying activities that meet and activities that do not meet the criteria in § 25.04.

(b) *Confirmation of a qualifying activity.* A bank may request that the OCC confirm that an activity meets the criteria in § 25.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the OCC confirms that an activity is consistent with the criteria in § 25.04, the OCC will notify the requestor and may add this activity to the list of activities that meet the qualifying activities criteria described in paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the OCC determines that an activity is not consistent with the criteria in § 25.04, the OCC will notify the requestor and may add this activity to the list of activities that do not meet the qualifying activities criteria described in paragraph (a) of this section.

(c) *Process*—(1) A bank may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on *www.occ.gov.*

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 25.04, the OCC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the OCC deems relevant.

(3) The OCC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 25.04.

(4) An activity is confirmed as a qualifying activity if the bank is not informed of an OCC objection within 6 months of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on an ongoing basis in response to requests for confirmation described in paragraph (b) of this section, the OCC will publish the qualifying activities list no less frequently than every three years for notice and comment to determine whether the list should change. If the OCC determines that a qualifying loan or community development investment no longer meets the criteria in § 25.04, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers.

§ 25.06 Qualifying activities quantification.

(a) *Community development service quantification.* The dollar value of a community development service is the compensation for the community development service *multiplied by* the number of hours the employee spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The dollar value of an in-kind donation is the fair market value of the donation,

as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The dollar value of a monetary donation is the actual dollar value of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2) of this section, the average of the dollar value, as of the close of business on the last day of the month, for each month the loan or investment is on-balance sheet, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally-binding commitment to invest, as adjusted by paragraph (e) of this section; and

(iii) The allowance for credit losses on off balance sheet credit exposures for contingent commitments to lend, as calculated in accordance with the instructions to the Call Report, Schedule RC–G, as adjusted by paragraph (e) of this section; or

(2) For qualifying retail loans sold within 90 days of origination, 25 percent of the aggregate dollar value of the loan at origination, as adjusted by paragraph (e) of this section.

(e) *Portion of qualifying activities that partially benefit.* The dollar value of a qualifying activity that partially benefits, as defined in § 25.03, is calculated by *multiplying* the percentage of the partial benefit by the full dollar value of the qualifying activity quantified under paragraphs (a)–(d) of this section.

§ 25.07 Qualifying activities value.

(a) *Bank-level qualifying activities value.* A bank evaluated under § 25.12 calculates its bank-level qualifying activities value annually based on the dollar value of all qualifying activities originated, made, purchased, or performed on behalf of the bank and not included in the bank-level qualifying activities value of another bank subject to this part or part 345. The qualifying activities value equals the *sum,* during a given annual period, of:

(1) The quantified dollar value of qualifying loans and community development investments, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made, as adjusted in paragraph (b) of this section; and

(iii) Monetary donations made, as adjusted in paragraph (b) of this section.

(b) *Multipliers.* The dollar value of the following qualifying activities will be adjusted by *multiplying* the actual or quantified dollar value by 2.

(1) Activities provided to or that support Community Development Financial Institutions, except activities related to mortgage-backed securities;

(2) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds; and

(3) Other affordable housing-related community development loans.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 25.12 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area.

Subpart C—Assessment Area

§ 25.08 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 25.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once during an evaluation period and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 25.10(c).

(b) *Facility-based assessment area(s)*—(1) A bank must delineate an assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities.

(2) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility, but may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(2) of this section.

(4) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s)*—(1) A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a

single metropolitan statistical area or nonmetropolitan area.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

(1) Reflect illegal discrimination; or

(2) Arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated based on its entire deposit customer base at the bank level under § 25.12.

(f) *Banks evaluated under strategic plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 25.16(g)(2).

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

Subpart D—Performance Evaluations

§ 25.09 Performance standards and ratings, in general.

(a) *Performance standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *General performance standards*—(i) The OCC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2) and (a)(3) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 25.12.

(ii) The OCC determines the assigned ratings for a bank evaluated under § 25.12 as provided in § 25.17.

(iii) The OCC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 25.12 as provided in § 25.18.

(2) *Small bank performance standards*—(i) The OCC applies the small bank performance standards as provided in § 25.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a small bank evaluated under the small bank performance standards in § 25.13 lending test and bank-level ratings as provided for in Appendix A of this part.

(3) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.16.

(b) *General performance standards opt in.* A small bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section and this election must occur at least six months before the start of a bank's next evaluation period. Small banks that elect to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 25.19, 25.22, and 25.23. Once a small bank has elected to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards and must do so six months before the start of its next evaluation period. Small banks that opt out will revert to being evaluated according to the small bank performance standards as provided in § 25.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section.

(c) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 25.10 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 25.12 will determine its bank-level and assessment area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank-level CRA evaluation measure.* A bank's bank-level CRA evaluation measure is the *sum of:*

(1) The bank's annual bank-level qualifying activities values calculated under § 25.07(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the *sum of:*

(1) The bank's annual assessment area qualifying activities value calculated under § 25.07(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .01.

(d) *Average CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual bank-level CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

§ 25.11 Retail lending distribution tests.

(a) *General.* In each assessment area, a bank evaluated as described in § 25.12 will apply a:

(1) Geographic distribution test for its small loan to a business product line or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations in the assessment area during the evaluation period.

(b) *Geographic distribution test*—(1) *Small loan to a business product line.* To pass the geographic distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or

the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of businesses in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to businesses in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(2) *Small loan to a farm product line.* To pass the geographic distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of farms in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to farms in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(c) *Borrower distribution test*—(1) *Home mortgage lending product line.* To pass the borrower distribution test for the home mortgage lending product line, a bank's percentage of home mortgage loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of home mortgage loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(2) *Consumer lending product line.* To pass the borrower distribution test for a consumer lending product line, a bank's percentage of consumer loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income individuals in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of consumer loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(3) *Small loan to a business product line.* To pass the borrower distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses provided to small businesses originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small businesses in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to businesses provided to small businesses from all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(4) *Small loan to a farm product line.* To pass the borrower distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms provided to small farms originated during the evaluation period in the assessment area must meet or exceed the thresholds established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small farms in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to farms provided to small farms from all banks evaluated under the general performance standards in § 25.12 in the assessment area.

§ 25.12 General performance standards and presumptive rating.

(a) *General.* The bank-level presumptive rating and assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category, at the bank level and in each assessment area. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The agencies will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the agencies will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The agencies will provide for a public notice and comment period on any proposed adjustments prior to finalizing the adjustments.

(c) *Bank-level performance standards*—(1) *Outstanding.* The bank-level outstanding performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 11 percent;

(ii) *Assessment area ratings.* The bank received an assigned rating of outstanding in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 25.07, *divided by* the average

quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory.* The bank-level satisfactory performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 6 percent;

(ii) *Assessment area ratings.* The bank received at least an assigned rating of satisfactory in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 25.07, *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve.* The bank-level needs to improve performance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that meets or exceeds 3 percent.

(4) *Substantial noncompliance.* The bank-level substantial noncompliance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that does not meet or exceed 3 percent.

(d) *Assessment area performance standards*—(1) *Outstanding.* The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests.* The bank must pass the geographic and borrower distribution tests for its major retail lending product lines evaluated in § 25.11;

(ii) *CRA evaluation measure.* The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 11 percent; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 25.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory.* The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for all retail lending product lines evaluated in § 25.11;

(ii) *CRA evaluation measure.* The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 6 percent; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 25.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve.* The assessment area needs to improve performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, that must meet or exceed 3 percent.

(4) *Substantial noncompliance.* The assessment area substantial noncompliance performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage that does not meet or exceed 3 percent.

§ 25.13 Small bank performance standards.

(a) *Performance lending test criteria.* The OCC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating.* The OCC assesses the performance of a small bank evaluated under this section as provided in appendix A of this part.

§ 25.14 Consideration of performance context.

(a) *General.* Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in §§ 25.12, 25.13, or 25.16. Based on that assessment, the OCC may adjust:

(1) The assessment area and bank-level presumptive ratings in § 25.12; or

(2) The small bank lending test and bank-level ratings as described in appendix A.

(b) *Performance context factors.* In assessing performance context, the OCC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 25.12, 25.13, or 25.16 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan provided for in 12 CFR 1290.6(a)(5), as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (*e.g.,* housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the OCC; and

(5) Any other information deemed relevant by the OCC.

(c) *Form.* Banks other than small banks must submit the information in paragraph (b) of this section on the performance context form available on *www.occ.gov.*

§ 25.15 Discriminatory and other illegal credit practices.

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the OCC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

(1) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(2) Violations of the Home Ownership and Equity Protection Act;

(3) Violations of section 5 of the Federal Trade Commission Act;

(4) Violations of section 8 of the Real Estate Settlement Procedures Act;

(5) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(6) Violations of the Military Lending Act; and

(7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 25.16 Strategic plan.

(a) *General.* The OCC assesses a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Plan submission*—(1) *Required submission.* A bank must submit a strategic plan that meets the requirements of this section if the bank:

(i) Would otherwise be evaluated under § 25.12 and does not maintain retail domestic deposits on-balance sheet; or

(ii) Is a small bank that does not originate retail loans.

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the OCC for approval.

(c) *Data reporting.* The OCC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 25.19, 25.20, 25.22, and 25.23, unless otherwise determined in writing by the OCC. The OCC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC evaluates the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or separate plans for one or more of its assessment areas.

(e) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the OCC's website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the OCC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the OCC determines the plan is not complete, the OCC will notify bank specifying the information needed, designating a reasonable period of time for the bank to provide the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards*—(i) A plan must specify measurable goals for helping to meet the credit needs of the bank's communities at the bank level and in each of its assessment areas, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation.* A plan must include a delineation of the bank's assessment area(s) that meets the requirements of § 25.08(a)–(d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards.* A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the OCC approves, both satisfactory and outstanding performance goals, the OCC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing.* The OCC will act upon a plan within 6 months after the OCC receives the complete plan and other material required under paragraph (g) of this section. If the OCC does not act within this time period, the plan will be deemed approved unless the OCC extends the review period for good cause for no more than 90 days.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers any written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan.* The OCC evaluates a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment.* During the term of a plan, a bank may request the OCC

to approve an amendment to the plan on grounds that there has been a material change in circumstances. The OCC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

§ 25.17 Assigned ratings.

(a) *General performance standards*—(1) *Bank-level assigned rating.* The OCC determines the bank-level assigned rating for a bank evaluated under § 25.12 based on its bank-level presumptive rating under § 25.12, adjusted for performance context under § 25.14, and consideration of discriminatory or other illegal credit practices under § 25.15.

(2) *Assessment area assigned rating.* The OCC determines the assessment area assigned ratings for a bank evaluated under § 25.12 based on its assessment area presumptive rating under § 25.12, adjusted for performance context under § 25.14 and consideration of discriminatory or other illegal credit practices under § 25.15.

(b) *Strategic plans assigned rating.* A bank operating under a strategic plan will receive, as applicable, assessment area assigned ratings, a bank-level assigned rating, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 25.14.

§ 25.18 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 25.12 with interstate branches, the OCC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned rating for that state or multistate metropolitan statistical area is the lowest rating assigned to a significant number of its assessment areas within that state or multistate metropolitan statistical area.

Subpart E [Redesignated]

■ 3. Redesignate subpart E as subpart F and redesignate §§ 25.61 through 25.65 as §§ 25.28 through 25.32, respectively.

■ 4. Add new subpart E to read as follows:

Subpart E—Data Collection, Recordkeeping, and Reporting

Sec.

25.19 Data collection for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.
25.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 25.13.
25.21 Activity location.
25.22 Recordkeeping.
25.23 Reporting for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.
25.24 Public disclosures.
25.25 Content and availability of public file.
25.26 Availability of planned evaluation schedule.
25.27 Public notice by banks.

§ 25.19 Data collection for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.

(a) *General.* Banks evaluated under the general performance standards in § 25.12 and banks evaluated under a strategic plan under § 25.16, unless otherwise determined in writing by the OCC, must collect and maintain the information required by this section.

(b) *Performance standards data.* A bank must collect and maintain the results of its:

(1) Retail lending distribution tests under § 25.11 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) Bank-level and each assessment-area level CRA evaluation measures calculated under § 25.10; and

(3) Presumptive ratings under § 25.12.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank until the completion of its next CRA evaluation:

(1) *Qualifying loan data.* For each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) Date of:

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 90 days of origination;

(iv) An indicator of whether the loan was originated or purchased;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract;

(viii) The income or revenue of the borrower; and

(ix) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for non-qualifying home mortgage loans and consumer loans originations by the bank until the completion of its next CRA evaluation:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) The date of origination;

(iv) The loan amount at origination;

(v) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract; and

(vi) The income of the borrower.

(3) *Number of home mortgage and consumer loans.* For the home mortgage product line and each consumer loan product line as defined in § 25.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small businesses.

(5) *Number of small loans to farms.* For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small farms.

(6) *Community development investment data.* For each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the investment;

(ii) Investment type;

(iii) Date of investment by the bank;

(iv) The outstanding dollar value of the investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet;

(v) The value of the monetary donation, as quantified in § 25.06;

(vi) The value of the in-kind donation, as quantified in § 25.06;

(vii) The investment location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(viii) The criteria in § 25.04 that the investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(7) *Community development services data.* For each community development service:

(i) The dollar value of the services, as quantified in § 25.06;

(ii) A description of the qualifying activity;

(iii) The date the service was performed;

(iv) The service location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in § 25.04 that the service satisfies or that it is on the illustrative list referenced in § 25.05.

(8) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Data collection certification.* A bank must collect and maintain a certification from each party conducting qualifying activities on behalf of the bank that the information that the party provided to the bank as described in paragraph (a) of this section is true and correct.

(e) *Assessment areas.* A bank must collect and maintain until the completion of its next CRA evaluation a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(f) *Bank facilities.* A bank must collect and maintain until the completion of its next CRA evaluation information indicating whether each facility operated by the bank during the evaluation period was a depository or non-depository facility.

§ 25.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 25.13.

Retail domestic deposit data collection. Small banks must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period until the completion of its next CRA evaluation.

§ 25.21 Activity location.

(a) For the purpose of this part:

(1) A consumer loan is located at the borrower's physical address on file with the bank;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

§ 25.22 Recordkeeping.

Banks must keep the data collected under § 25.19 and § 25.20 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation.

§ 25.23 Reporting for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.

(a) *General.* Banks evaluated under the general performance standards in § 25.12 and banks evaluated under a strategic plan under § 25.16, unless otherwise determined in writing by the OCC, must report the information required by this section.

(b) *Performance standards data.* On an annual basis, a bank subject to this section must report to the OCC the information required by § 25.19(b).

(c) *Qualifying activities data.* On an annual basis, a bank subject to this section must report to the OCC the following data for all qualifying activities conducted during the annual period:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(d) *Data collection certification.* A bank subject to this section must annually provide to the OCC any certification required by § 25.19(d).

(e) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the OCC the information required by § 25.19(e).

(f) *Retail loans.* A bank subject to this section must annually report to the OCC the information required by § 25.19(c)(3)–(5) for loans originated during the annual period.

(g) *Retail domestic deposit data.* A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(h) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 25.14(c).

(i) *Form.* Banks subject to this section must use the CRA data reporting form available at *www.occ.gov* to meet the reporting requirements in this section.

§ 25.24 Public disclosures.

(a) *Individual CRA Disclosure Statement.* The OCC prepares annually a CRA Disclosure Statement for each bank evaluated under § 25.12 that contains at the bank level:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The OCC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county

level, from all banks evaluated under § 25.12, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

(1) The number of home mortgage loan originations;

(2) The number of home mortgage loan originations to low- or moderate-income individuals and families;

(3) The number of originations for each consumer loan product line;

(4) The number of originations to low- or moderate-income individuals and families for each consumer loan product line;

(5) The number of small loans to businesses;

(6) The number of small loans to businesses in low- and moderate-income census tracts;

(7) The number of small loans to businesses provided to small businesses;

(8) The number of small loans to farms;

(9) The number of small loans to farms in low- and moderate-income census tracts; and

(10) The number of small loans to farms provided to small farms;

(c) *Availability of CRA disclosure statements.* The OCC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.

(d) *Availability of ratings.* The OCC will make available the ratings of all OCC-regulated banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office and branches.

§ 25.25 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank must place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and census tracts;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

(d) *Updating.* Except as otherwise provided in this section, a bank must ensure that the information required by this section is current as of April 1 of each year.

§ 25.26 Availability of planned evaluation schedule.

The OCC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

§ 25.27 Public notice by banks.

A bank must make available to the public the notice set forth in Appendix B of this part. Parenthetical text must be adjusted by each bank as appropriate. Bracketed text must be included if applicable.

■ 5. Revise paragraph (a) of newly designated § 25.29 to read as follows:

§ 25.29 Definitions.

* * * * *

(a) *Bank* means, unless the context indicates otherwise, a national bank and a foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

* * * * *

§ 25.30 [Amended]

■ 6. In newly designated § 25.30 amend paragraph (b)(2) by removing ''§ 25.64'' and adding ''§ 25.31'' in its place.

■ 7. Revise Appendix A to read as follows:

Appendix A to Part 25—Small Bank Ratings

(a) *Ratings in general*—(1) In assigning a rating, the OCC evaluates a small bank's performance under the applicable performance criteria in § 25.13, adjusting for performance context in § 25.14 and consideration of any evidence of discriminatory and illegal credit practices as described in § 25.15. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of

different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Bank-level rating*—(i) *Eligibility for an outstanding overall rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for a bank-level rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making community development investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(ii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

■ 8. Revise Appendix B to read as follows:

Appendix B to Part 25—Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency (OCC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The OCC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the OCC; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public section of our most recent CRA evaluation, prepared by the OCC, which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the OCC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the OCC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and Deputy Comptroller (address and email address). Your comments, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of __(address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

PART 195—[REMOVED]

■ 9. Under the authority of 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B), remove part 195.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

■ 10. For the reasons discussed in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

Subpart A—General

Sec.
345.01 Authority, purposes, and scope.
345.02 Effect of CRA performance on applications.
345.03 Definitions.

Subpart B—Qualifying Activities

345.04 Qualifying activities criteria.
345.05 Qualifying activities confirmation and illustrative list.
345.06 Qualifying activities quantification.
345.07 Qualifying activities value.

Subpart C—Assessment Area

345.08 Assessment area.

Subpart D—Performance Evaluations

345.09 Performance standards and ratings, in general.
345.10 CRA evaluation measure.
345.11 Retail lending distribution tests.
345.12 General performance standards and presumptive rating.
345.13 Small bank performance standards.
345.14 Consideration of performance context.
345.15 Discriminatory and other illegal credit practices.
345.16 Strategic plan.
345.17 Assigned ratings.
345.18 State/multistate metropolitan statistical area assigned rating.

Subpart E—Data Collection, Recordkeeping, and Reporting

345.19 Data collection for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 34.16.
345.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 345.13.
345.21 Activity location.
345.22 Recordkeeping.
345.23 Reporting for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 345.16.
345.24 Public disclosures.
345.25 Content and availability of public file.
345.26 Availability of planned evaluation schedule.
345.27 Public notice by banks.
Appendix A to Part 345—Small Bank Ratings
Appendix B to Part 345—Community Reinvestment Act Notice

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

Subpart A—General

§ 345.01 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the

agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Federal Deposit Insurance Corporation (FDIC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the FDIC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* This part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) *Insured State branches.* Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (FDIA). In the case of insured State branches, references in this part to main office mean the principal branch within the United States and the term branch or branches refers to any insured State branch or branches located within the United States. The assessment area of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.08.

(3) *Certain exempt banks.* This part does not apply to banks that do not perform commercial or retail banking services by granting credit or offering credit-related products or services to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include banker's banks, as defined in 12 U.S.C. 24(Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

(4) *Compliance Dates*—(i) *Banks other than small banks*—(A) Banks that are not small banks must comply with the following requirements of this part on the following dates:

(1) One year after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.19, and 345.22; and

(2) Two years after the effective date of the final rule for the reporting requirements in § 345.23.

(B) Banks that are not small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(i)(A)(*2*) of this section, including any extensions approved by the FDIC.

(ii) *Small banks*—(A) Small banks must comply with the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.20, and 345.22 one year after the effective date of this rule.

(B) Small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the compliance date in paragraph (c)(4)(ii)(A) of this section, including any extensions approved by the FDIC.

(iii) *Small banks that opt into the general performance standards in § 345.12 as of the effective date of this rule and banks that no longer meet the small bank definition*—(A) Small banks that opt into the general performance standards in § 345.12 as of the effective date of this rule pursuant to § 345.09(b) and banks that no longer meet the small bank definition must comply with the following requirements on the following dates:

(1) Two years after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.19, and 345.22; and

(2) Three years after the effective date of the final rule for the reporting requirements in § 345.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iii)(A)(*2*) of this section, including any extensions approved by the FDIC.

(iv) *Small banks that opt into the general performance standards in § 345.12 after the effective date of the final rule*—(A) Small banks that opt into the general performance standards in § 345.12 after the effective date of the final rule pursuant to § 345.09(b) must comply with the following requirements on the following dates:

(1) One year after the bank opts in for the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.19, and 345.22; and

(2) Two years after the bank opts in for the reporting requirements in § 345.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iv)(A)(*2*) of this section, including any extensions approved by FDIC.

§ 345.02 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the FDIC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of the bank's main office or a branch;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for a newly chartered financial institution.

(b) *New financial institutions.* A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the same meaning as this term is given in 12 U.S.C. 1813.

§ 345.03 Definitions.

For purposes of this part, the following definitions apply:

Activity means a loan, investment, or service by a bank.

Affiliate has the same meaning as this term is given in Regulation W, 12 CFR 223.2(a) and (b) as of the effective date of this rule but applies to member and non-member banks.

Agencies means the Office of the Comptroller of the Currency and the FDIC.

Area median income means:

(1) The median family income for the metropolitan statistical area, if a person or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

Assessment area means a geographic area delineated in accordance with § 345.08.

Average means the statistical mean.

Bank means a State nonmember bank, as that term is defined in section 3(e)(2) of the FDIA, as amended (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as provided in § 345.01(c). The term bank also includes an insured State branch.

Branch means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or non-profit organization. The term ''branch'' only includes a ''domestic branch'' as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

Call Report means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

Community Development Financial Institution has the same meaning as this term is given in 12 U.S.C. 4702(5).

Community development investment means a lawful investment, membership share, deposit, legally-binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the criteria of § 345.04(c).

Community development loan means a loan, line of credit, or contingent commitment to lend that meets the criteria of § 345.04(c).

Community development services means bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 345.04(c) or supporting activities that meet the criteria of § 345.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

Compensation means the Bureau of Labor Statistics calculation of the hourly wage for that type of work engaged in by a bank employee in the course of conducting community development services.

Consumer loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures, which include the following product lines:

(1) *Credit card,* which is an extension of credit to an individual for household, family, and other personal expenditures arising from credit cards;

(2) *Other revolving credit plan,* which is an extension of credit to an individual for household, family, and other personal expenditures arising from prearranged overdraft plans and other revolving credit plans not accessed by credit cards;

(3) *Automobile loan,* which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(4) *Other consumer loan,* which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a ''loan secured by real estate'' and other than those for purchasing or carrying securities), including *low-cost education loans,* which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

Contingent commitment to lend means a legally-binding commitment to extend credit in instances where another bank initially funded, or committed to fund, a project but cannot, for financial or legal reasons, advance unanticipated additional funds necessary to complete the project.

Distressed area means a middle-income census tract identified by the agencies that meets one or more of the following conditions:

(1) An *unemployment* rate of at least 1.5 times the national average,

(2) A poverty rate of 20 percent or more, or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

Essential community facility means a public facility, including but not limited to a school, library, park, hospital and health care facility, and public safety facility.

Essential infrastructure means:

(1) Public infrastructure, including but not limited to public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

Family farm has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

Financing means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

High-cost area means any county in which the percentage of households who have monthly housing costs greater than 30 percent of their monthly income is greater than 40 percent.

Home mortgage loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1–4 family residential construction loans;

(2) Item 1.c Loans secured by 1–4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multifamily (5 or more) residential properties.

Income levels are:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a census tract.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in the case of a census tract.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in the case of a census tract.

(4) *Upper-income,* which means an individual income that is 120 percent or

more of the area median income, or a median family income that is 120 percent or more in the case of a census tract.

Indian country has the same meaning as this term is given in 18 U.S.C. 1151.

Insured State branches mean the branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the FDIA. In the case of insured State branches, references in this part to main office mean the principal branch within the United States and the term branch or branches refers to any insured State branch or branches located within the United States.

Low-income credit union has the same meaning as this term is given in 12 CFR 701.34.

Major retail lending product line means a bank's retail lending product line that composes at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period.

Metropolitan division has the same meaning as this term is given by the Director of the Office of Management and Budget.

Metropolitan statistical area has the same meaning as this term is given by the Director of the Office of Management and Budget.

Military bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

Minority depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(1).

Monetary or in-kind donation means:

(1) A grant, monetary contribution, or monetary donation, or

(2) A contribution of goods, commodities, or other non-monetary resources.

Non-branch deposit-taking facility means a banking facility other than a branch owned or operated by, or operated exclusively for, the bank that is authorized to take deposits that is located in any state or territory of the United States of America.

Nonmetropolitan area means any area that is not located in a metropolitan statistical area.

Partially benefits means 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

Primarily benefits means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example, in a prospectus, loan proposal, or community action plan.

Qualifying activity means an activity that helps meet the credit needs of a bank's entire community, including low- and moderate-income individuals and communities, in accordance with § 345.04.

Qualifying loan means a retail loan that meets the criteria in § 345.04(b) or a community development loan that meets the criteria in § 345.04(c).

Retail domestic deposit means a ''deposit'' as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g)).

Retail loan means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

Retail lending product line means a:

(1) Home mortgage loan product line, which includes all home mortgage loans;

(2) Small loan to a business product line, which includes all small loans to businesses;

(3) Small loan to a farm product line, which includes all small loans to farms; or

(4) Consumer lending product line, which includes:

(ii) An automobile loan product line;

(iii) A credit card product line;

(iv) An other revolving credit plan product line; or

(v) An other consumer loan product line.

Small bank—(1) *Definition.* Small bank means a bank that:

(i) Had assets of $500 million or less in each of the previous four calendar quarters; or

(ii) Was a small bank as of the close of the calendar quarter immediately preceding the close of the last calendar quarter and did not have assets of greater than $500 million as of the close of each of the past four calendar quarters.

(2) *Adjustment.* The dollar figures in this definition shall be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest $100,000.

Small business means a business that has gross annual revenues of no greater than $2 million. The FDIC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Small farm means a farm with gross annual revenues of no greater than $2 million. The FDIC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Small loan to a business means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than $2 million. The FDIC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Small loan to a farm means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than $2 million. The FDIC will annually adjust the $2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

Underserved area means a middle-income census tract:

(1) Identified by the agencies as meeting the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The agencies will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the agencies as:

(i) Not having a branch of any bank within:

(A) 2 miles of the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles of the center of the census tract if it is a mixed census tract, as

defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles of the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles of the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

Women's depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(2).

Subpart B—Qualifying Activities

§ 345.04 Qualifying activities criteria.

(a) *General.* Retail loans, community development loans, community development investments, and community development services that help meet the credit needs of a bank's entire community, including low- and moderate-income communities, are qualifying activities if they meet the criteria in this section at the time the activity is originated, made, or conducted. If the activity is subsequently purchased by another bank, it is a qualifying activity if it meets the criteria in this section at the time of purchase.

(b) *Retail loans.* A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) Small business; or

(iii) Small farm;

(2) Located in Indian country;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services.* A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing:

(A) That is likely to partially or primarily benefit low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That partially or primarily benefits low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families;

(D) That partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or

(E) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for middle-income individuals or families in high-cost areas; or

(ii) Owner-occupied housing purchased, refinanced, or improved by low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Businesses or Farms that meet the size-eligibility standards of the Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, or the Small Business Investment Company, as described 13 CFR part 107, by providing technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary;

(4) Community support services which means activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(5) Essential community facilities that partially or primarily benefit or serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(6) Essential infrastructure that benefits or serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs,

(ii) Receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily benefit low- or moderate-income individuals or families;

(ii) Partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives; or

(iii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z–2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z–1(a);

(12) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(13) Ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

§ 345.05 Qualifying activities confirmation and illustrative list.

(a) *Qualifying activities list.* The FDIC maintains a publicly available illustrative list on the FDIC's website of

non-exhaustive examples of qualifying activities that meet and activities that do not meet the criteria in § 345.04.

(b) *Confirmation of a qualifying activity.* A bank may request that the FDIC confirm that an activity meets the criteria in § 345.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the FDIC confirms that an activity is consistent with the criteria in § 345.04, the FDIC will notify the requestor and may add this activity to the list of activities that meet the qualifying activities criteria described in paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the FDIC determines that an activity is not consistent with the criteria in § 345.04, the FDIC will notify the requestor and may add this activity to the list of activities that do not meet the qualifying activities criteria described in paragraph (a) of this section.

(c) *Process*—(1) A bank may request that the FDIC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on the FDIC's website.

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 345.04, the FDIC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the FDIC deems relevant.

(3) The FDIC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 345.04.

(4) An activity is confirmed as a qualifying activity if the bank is not informed of an FDIC objection within 6 months of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on an ongoing basis in response to requests for confirmation described in paragraph (b) of this section, the FDIC will publish the qualifying activities list no less frequently than every three years for notice and comment to determine whether the list should change. If the FDIC determines that a qualifying loan or community development investment no longer meets the criteria in § 345.04, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers.

§ 345.06 Qualifying activities quantification.

(a) *Community development service quantification.* The dollar value of a community development service is the compensation of for the community development service *multiplied by* the number of hours the employee spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The dollar value of an in-kind donation is the fair market value of the donation, as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The dollar value of a monetary donation is the actual dollar value of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2) of this section, the average of the dollar value, as of the close of business on the last day of the month, for each month the loan or investment is on-balance sheet, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally-binding commitment to invest, as adjusted by paragraph (e) of this section; and

(iii) The allowance for credit losses on off balance sheet credit exposures for contingent commitments to lend, as calculated in accordance with the instructions to the Call Report, Schedule RC–G, as adjusted by paragraph (e) of this section; or

(2) For qualifying retail loans sold within 90 days of origination, 25 percent of the aggregate dollar value of the loan at origination, as adjusted by paragraph (e) of this section.

(e) *Portion of qualifying activities that partially benefit.* The dollar value of a qualifying activity that partially benefits, as defined in § 345.03, is calculated by *multiplying* the percentage of the partial benefit by the full dollar value of the qualifying activity quantified under paragraphs (a)–(d) of this section.

§ 345.07 Qualifying activities value.

(a) *Bank-level qualifying activities value.* A bank evaluated under § 345.12 calculates its bank-level qualifying activities value annually based on the dollar value of all qualifying activities originated, made, purchased, or performed on behalf of the bank and not included in the bank-level qualifying activities value of another bank subject to this part or part 25. The qualifying activities value equals the *sum,* during a given annual period, of:

(1) The quantified dollar value of qualifying loans and community development investments, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made, as adjusted in paragraph (b) of this section; and

(iii) Monetary donations made, as adjusted in paragraph (b) of this section.

(b) *Multipliers.* The dollar value of the following qualifying activities will be adjusted by *multiplying* the actual or quantified dollar value by 2.

(1) Activities provided to or that support Community Development Financial Institutions, except activities related to mortgage-backed securities;

(2) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds; and

(3) Other affordable housing-related community development loans.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 345.12 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area.

Subpart C—Assessment Area

§ 345.08 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community. The FDIC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 345.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once during an evaluation period and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 345.10(c).

(b) *Facility-based assessment area(s)*—(1) A bank must delineate an assessment area encompassing each location where the bank maintains a

main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities.

(2) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility, but may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(2) of this section.

(4) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s)*—(1) A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

(1) Reflect illegal discrimination; or

(2) Arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated based on its entire deposit customer base at the bank level under § 345.12.

(f) *Banks evaluated under* strategic *plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 345.16(g)(2).

(g) *Use of assessment area(s).* The FDIC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the FDIC determines that the assessment area(s) do not comply with the requirements of this section.

Subpart D—Performance Evaluations

§ 345.09 Performance standards and ratings, in general.

(a) *Performance standards.* The FDIC assesses the CRA performance of a bank in an examination as follows:

(1) *General performance standards*—(i) The FDIC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2) and (a)(3) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 345.12.

(ii) The FDIC determines the assigned ratings for a bank evaluated under § 345.12 as provided in § 345.17.

(iii) The FDIC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 345.12 as provided in § 345.18.

(2) *Small bank performance standards*—(i) The FDIC applies the small bank performance standards as provided in § 345.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The FDIC assigns a small bank evaluated under the small bank performance standards in § 345.13 lending test and bank-level ratings as provided for in Appendix A of this part.

(3) *Strategic plan.* The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in § 345.16.

(b) *General performance standards opt in.* A small bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section and this election must occur at least six months before the start of a bank's next evaluation period. Small banks that elect to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 345.19, 345.22, and 345.23. Once a small bank has elected to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards and must do so six months before the start of its next evaluation period. Small banks that opt out will revert to being evaluated according to the small bank performance standards as provided in § 345.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section.

(c) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the FDIC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 345.10 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 345.12 will determine its bank-level and assessment

area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank-level CRA evaluation measure.* A bank's bank-level CRA evaluation measure is the *sum of:*

(1) The bank's annual bank-level qualifying activities values calculated under § 345.07(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the *sum of:*

(1) The bank's annual assessment area qualifying activities value calculated under § 345.07(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .01.

(d) *Average CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual bank-level CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

§ 345.11 Retail lending distribution tests.

(a) *General.* In each assessment area, a bank evaluated as described in § 345.12 will apply a:

(1) Geographic distribution test for its small loan to a business product line or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations in the assessment area during the evaluation period.

(b) *Geographic distribution test*—(1) *Small loan to a business product line.* To pass the geographic distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of businesses in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to businesses in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(2) *Small loan to a farm product line.* To pass the geographic distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of farms in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to farms in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(c) *Borrower distribution test*—(1) *Home mortgage lending product line.* To pass the borrower distribution test for the home mortgage lending product line, a bank's percentage of home mortgage loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of home mortgage loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(2) *Consumer lending product line.* To pass the borrower distribution test for a consumer lending product line, a bank's percentage of consumer loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income individuals in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of consumer loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(3) *Small loan to a business product line.* To pass the borrower distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses provided to small businesses originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small businesses in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to businesses provided to small businesses from all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(4) *Small loan to a farm product line.* To pass the borrower distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms provided to small farms originated during the evaluation period in the assessment area must meet or exceed the thresholds established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small farms in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to farms provided to small farms from all banks evaluated under the general performance standards in § 345.12 in the assessment area.

§ 345.12 General performance standards and presumptive rating.

(a) *General.* The bank-level presumptive rating and assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category, at the bank level and in each assessment area. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The agencies will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the agencies will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The agencies will provide for a public notice and comment period on any proposed adjustments prior to finalizing the adjustments.

(c) *Bank-level performance standards*—(1) *Outstanding.* The bank-level outstanding performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 11 percent;

(ii) *Assessment area ratings.* The bank received an assigned rating of outstanding in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory.* The bank-level satisfactory performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 6 percent;

(ii) *Assessment area ratings.* The bank received at least an assigned rating of satisfactory in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve.* The bank-level needs to improve performance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that meets or exceeds 3 percent.

(4) *Substantial noncompliance.* The bank-level substantial noncompliance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that does not meet or exceed 3 percent.

(d) *Assessment area performance standards*—(1) *Outstanding.* The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests.* The bank must pass the geographic and borrower distribution tests for its major retail lending product lines evaluated in § 345.11;

(ii) *CRA evaluation measure.* The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 11 percent; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory.* The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for all retail lending product lines evaluated in § 345.11;

(ii) *CRA evaluation measure.* The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 6 percent; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve.* The assessment area needs to improve performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, that must meet or exceed 3 percent.

(4) *Substantial noncompliance.* The assessment area substantial noncompliance performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, that does not meet or exceed 3 percent.

§ 345.13 Small bank performance standards.

(a) *Performance lending test criteria.* The FDIC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating.* The FDIC assesses the performance of a small bank evaluated under this section as provided in appendix A of this part.

§ 345.14 Consideration of performance context.

(a) *General.* Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in §§ 345.12, 345.13, or 345.16. Based on that assessment, the FDIC may adjust:

(1) The assessment area and bank-level presumptive ratings in § 345.12; or

(2) The small bank lending test and bank-level ratings as described in appendix A.

(b) *Performance context factors.* In assessing performance context, the FDIC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 345.12, 345.13, or 345.16 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan provided for in 12 CFR 1290.6(a)(5), as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (*e.g.,* housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the FDIC; and

(5) Any other information deemed relevant by the FDIC.

(c) *Form.* Banks other than small banks must submit the information in paragraph (b) of this section on the performance context form available on the FDIC's website.

§ 345.15 Discriminatory and other illegal credit practices.

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the FDIC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

(1) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(2) Violations of the Home Ownership and Equity Protection Act;

(3) Violations of section 5 of the Federal Trade Commission Act;

(4) Violations of section 8 of the Real Estate Settlement Procedures Act;

(5) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(6) Violations of the Military Lending Act; and

(7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 345.16 Strategic plan.

(a) *General.* The FDIC assesses a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the FDIC as provided for in this section;

(2) The FDIC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Plan submission*—(1) *Required submission.* A bank must submit a strategic plan that meets the requirements of this section if the bank:

(i) Would otherwise be evaluated under § 345.12 and does not maintain retail domestic deposits on-balance sheet; or

(ii) Is a small bank that does not originate retail loans.

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the FDIC for approval.

(c) *Data reporting.* The FDIC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 345.19, 345.20, 345.22, and 345.23 unless otherwise determined in writing by the FDIC. The FDIC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the FDIC evaluates the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or separate plans for one or more of its assessment areas.

(e) *Public participation in plan development.* Before submitting a plan to the FDIC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the *FDIC's* website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the FDIC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the FDIC

determines the plan is not complete, the FDIC will notify bank specifying the information needed, designating a reasonable period of time for the bank to provide the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards*—(i) A plan must specify measurable goals for helping to meet the credit needs of the bank's communities at the bank level and in each of its assessment areas, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation.* A plan must include a delineation of the bank's assessment area(s) that meets the requirements of § 345.08(a)–(d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information.* A bank may submit additional information to the FDIC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the FDIC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards.* A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the FDIC approves, both satisfactory and outstanding performance goals, the FDIC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing.* The FDIC will act upon a plan within 6 months after the FDIC receives the complete plan and other material required under paragraph (g) of this section. If the FDIC does not act within this time period, the plan will be deemed approved unless the FDIC extends the review period for good cause for no more than 90 days.

(2) *Public participation.* In evaluating the plan's goals, the FDIC considers any written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan.* The FDIC *evaluates* a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment.* During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The FDIC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

§ 345.17 Assigned ratings.

(a) *General performance standards*—(1) *Bank-level assigned rating.* The FDIC determines the bank-level assigned rating for a bank evaluated under § 345.12 based on its bank-level presumptive rating under § 345.12, adjusted for performance context under § 345.14, and consideration of discriminatory or other illegal credit practices under § 345.15.

(2) *Assessment area assigned rating.* The FDIC determines the assessment area assigned ratings for a bank evaluated under § 345.12 based on its assessment area presumptive rating under § 345.12, adjusted for performance context under § 345.14 and consideration of discriminatory or other illegal credit practices under § 345.15.

(b) *Strategic plans assigned rating.* A bank operating under a strategic plan will receive, as applicable, assessment area assigned ratings, a bank-level assigned rating, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 345.14.

§ 345.18 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 345.12 with interstate branches, the FDIC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned rating for that state or multistate metropolitan statistical area is the lowest rating assigned to a significant number of its assessment areas within that state or multistate metropolitan statistical area.

Subpart E—Data Collection, Recordkeeping, and Reporting

§ 345.19 Data collection for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 345.16.

(a) *General.* Banks evaluated under the general performance standards in § 345.12 and banks evaluated under a strategic plan under § 345.16, unless otherwise determined in writing by the FDIC, must collect and maintain the information required by this section.

(b) *Performance standards data.* A bank must collect and maintain the results of its

(1) Retail lending distribution tests under § 345.11 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) Bank-level and each assessment-area level CRA evaluation measures calculated under § 345.10; and

(3) Presumptive ratings under § 345.12.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank until the completion of its next CRA evaluation:

(1) *Qualifying loan data.* For each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) Date of

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 90 days of origination;

(iv) An indicator of whether the loan was originated or purchased;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract;

(viii) The income or revenue of the borrower; and

(ix) The criteria in § 345.04 that the loan satisfies or that it is on the illustrative list referenced in § 345.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for non-qualifying home mortgage loans and consumer loans originations by the bank until the completion of its next CRA evaluation:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) The date of origination;

(iv) The loan amount at origination;

(v) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract; and

(vi) The income of the borrower.

(3) *Number of home mortgage and consumer loans.* For the home mortgage product line and each consumer loan product line as defined in § 345.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small businesses.

(5) *Number of small loans to farms.* For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small farms.

(6) *Community development investment data.* For each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the investment;

(ii) Investment type;

(iii) Date of investment by the bank;

(iv) The outstanding dollar value of the investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet;

(v) The value of the monetary donation, as quantified in § 345.06;

(vi) The value of the in-kind donation, as quantified in § 345.06;

(vii) The investment location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(viii) The criteria in § 345.04 that the investment satisfies or that it is on the illustrative list referenced in § 345.05 and whether it serves a particular assessment area, if applicable.

(7) *Community development services data.* For each community development service:

(i) The dollar value of the services, as quantified in § 345.06;

(ii) A description of the qualifying activity;

(iii) The date the service was performed;

(iv) The service location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in § 345.04 that the service satisfies or that it is on the illustrative list referenced in § 345.05.

(8) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address of *each* depositor as of the close of business on the last day of each quarter during the examination period.

(c) *Data collection certification.* A bank must collect and maintain a certification from each party conducting qualifying activities on behalf of the bank that the information that the party provided to the bank as described in paragraph (a) of this section is true and correct.

(d) *Assessment areas.* A bank must collect and maintain until the completion of its next CRA evaluation a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Bank facilities.* A bank must collect and maintain until the completion of its next CRA evaluation information indicating whether each facility operated by the bank during the evaluation period was a depository or non-depository facility.

§ 345.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 345.13.

Retail domestic deposit data collection. Small banks must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period until the completion of its next CRA evaluation.

§ 345.21 Activity location.

(a) For the purpose of this part:

(1) A consumer loan is located at the borrower's physical address on file with the bank;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

§ 345.22 Recordkeeping.

Banks must keep the data collected under § 345.19 and § 345.20 in machine readable form (as prescribed by the FDIC) until the completion of their next CRA evaluation.

§ 345.23 Reporting for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 345.16.

(a) *General.* Banks evaluated under the general performance standards in § 345.12 and banks evaluated under a strategic plan under § 345.16, unless otherwise determined in writing by the FDIC, must report the information required by this section.

(b) *Performance standards data.* On an annual basis, a bank subject to this section must report to the FDIC the information required by § 345.19(b).

(c) *Qualifying activities data.* On an annual basis, a bank subject to this section must report to the FDIC the following data for all qualifying activities conducted during the annual period:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(d) *Data collection certification.* A bank subject to this section must annually provide to the FDIC any certification required by § 345.19(d).

(e) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the FDIC the information required by § 345.19(e).

(f) *Retail loans.* A bank subject to this section must annually report to the FDIC the information required by § 345.19(c)(3)–(5) for loans originated during the annual period.

(g) *Retail domestic deposit data.* A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(h) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 345.14(c).

(i) *Form.* Banks subject to this section must use the CRA data reporting form available on the FDIC's website to meet the reporting requirements in this section.

§ 345.24 Public disclosures.

(a) *Individual CRA Disclosure Statement.* The FDIC prepares annually a CRA Disclosure Statement for each bank evaluated under § 345.12 that contains at the bank level:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The FDIC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county level, from all banks evaluated under § 345.12, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

(1) The number of home mortgage loan originations;

(2) The number of home mortgage loan originations to low- or moderate-income individuals and families;

(3) The number of originations for each consumer loan product line;

(4) The number of originations to low- or moderate-income individuals and families for each consumer loan product line;

(5) The number of small loans to businesses;

(6) The number of small loans to businesses in low- and moderate-income census tracts;

(7) The number of small loans to businesses provided to small businesses;

(8) The number of small loans to farms;

(9) The number of small loans to farms in low- and moderate-income census tracts; and

(10) The number of small loans to farms provided to small farms;

(c) *Availability of CRA disclosure statements.* The FDIC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.

(d) *Availability of ratings.* The FDIC will make available the ratings of all FDIC-*regulated* banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office and branches.

§ 345.25 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the FDIC. The bank must place this copy in the public file within 30 business days after its receipt from the FDIC;

(3) A list of the bank's branches, their street addresses, and census tracts;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the FDIC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

(d) *Updating.* Except as otherwise provided in this section, a bank must ensure that the information required by this section is current as of April 1 of each year.

§ 345.26 Availability of planned evaluation schedule.

The FDIC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

§ 345.27 Public notice by banks.

A bank must make available to the public the notice set forth in Appendix B of this part. Parenthetical text must be adjusted by each bank as appropriate. Bracketed text must be included if applicable.

Appendix A to Part 345—Small Bank Ratings

(a) *Ratings in general*—(1) In assigning a rating, the FDIC evaluates a small bank's

performance under the applicable performance criteria in § 345.13, adjusting for performance context in § 345.14 and consideration of any evidence of discriminatory and illegal credit practices as described in § 345.15. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Bank-level rating*—(i) *Eligibility for an outstanding overall rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for a bank-level rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making community development investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(ii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

Appendix B to Part 345—Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the FDIC; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public section of our most recent CRA evaluation, prepared by the FDIC, which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the FDIC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Regional Director, FDIC (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and the FDIC Regional Director (address and email address). Your comments, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Director. You may also request from the FDIC Regional Director an announcement of our applications covered by the CRA filed with the FDIC. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of ____ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

Dated: December 12, 2019.

Joseph M. Otting,

Comptroller of the Currency.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 12, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27940 Filed 1–8–20; 8:45 am]

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