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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0478; Product Identifier 2019–NM–040–AD; Amendment 39–19817; AD 2020–01–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–12–07, which applied to certain The Boeing Company Model 737–800, –900, and –900ER series airplanes. AD 2017–12–07 required replacing the affected left temperature control valve and control cabin trim air modulating valve. This AD retains the requirements of AD 2017–12–07, expands the applicability to include additional airplanes, and adds a new requirement for certain airplanes to identify and replace the affected parts. This AD was prompted by reports of in-flight failure of the left temperature control valve and control cabin trim air modulating valve. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2017 (82 FR 27416, June 15, 2017).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0478.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0478; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Julie Moon, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3571; email: *julie.moon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–12–07, Amendment 39–18922 (82 FR 27416, June 15, 2017) (''AD 2017–12–07''), for certain The Boeing Company Model 737–800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on July 8, 2019 (84 FR 32341). The NPRM was prompted by reports of in-flight failure of the left temperature control valve and control cabin trim air modulating valve, and a determination that the affected parts may be installed on airplanes outside the applicability of AD 2017–12–07. The NPRM proposed to retain the requirements of AD 2017–12–07, expand the applicability to include those other airplanes, and add a new requirement for certain airplanes to identify and replace the affected parts. The FAA is issuing this AD to address the possible occurrence of temperatures in excess of 100 degrees Fahrenheit in the flight deck or the passenger cabin during cruise, which could lead to the impairment of the flightcrew and prevent continued safe flight and landing.

Comments

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

Support for the NPRM

United Airlines; The Air Line Pilots Association, International (ALPA); Boeing; Southwest Airlines; and Patrick Imperatrice expressed support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST00830SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST00830SE does not affect the ability to accomplish the actions required by this AD. This AD has not been changed regarding this issue.

Request To Allow Future Part Numbers Without Alternate Method of Compliance (AMOC)

Southwest Airlines requested that the FAA allow future valve part numbers to be installed without the need for an AMOC, because the unsafe condition only exists when a part number (P/N) 398908–4 valve is installed in the left temperature control or control cabin trim air modulating position.

The FAA disagrees with the commenter's request because the only valve part numbers currently approved as replacements for P/N 398908–4 are P/Ns 398908–3 and 398908–5. These approved part numbers must be installed to address the identified unsafe condition. If additional part numbers are approved as design changes in the future, the design approval holder or operator may request approval of an AMOC using the procedures in paragraph (j) of this AD. This AD has not been changed regarding this issue.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

This AD requires Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016, which the Director of the Federal Register approved for incorporation by reference as of July 20, 2017 (82 FR 27416, June 15, 2017). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 2,027 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/records check (new actions) (up to 1,708 airplanes)	1 work-hour × $85 per hour = $85	$0	$85	Up to $145,180.
Replacement (retained actions from AD 2017–12–07) (up to 319 airplanes)	9 work-hours × $85 per hour = $765	4,800	5,565	Up to $1,775,235.

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection or records check. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	9 work-hours × $85 per hour = $765	$4,800	$5,565

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–12–07, Amendment 39–18922 (82 FR 27416, June 15, 2017), and adding the following new AD:

2020–01–11 The Boeing Company: Amendment 39–19817; Docket No. FAA–2019–0478; Product Identifier 2019–NM–040–AD.

(a) Effective Date

This AD is effective February 21, 2020.

(b) Affected ADs

This AD replaces AD 2017–12–07, Amendment 39–18922 (82 FR 27416, June 15, 2017).

(c) Applicability

This AD applies to all The Boeing Company Model 737–800, –900, and –900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of in-flight failure of the left temperature control valve and control cabin trim air modulating valve. The FAA is issuing this AD to address the possible occurrence of temperatures in excess of 100 degrees Fahrenheit in the flight deck or the passenger cabin during cruise, which could lead to the impairment of the flightcrew and prevent continued safe flight and landing.

(f) Compliance

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

(g) Retained Valve Replacement, With Revised Compliance Language

This paragraph restates the requirements of paragraph (g) of AD 2017–12–07 with revised compliance language. For airplanes identified in Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016: Within 60 months after July 20, 2017 (the effective date of AD 2017–12–07), replace the left temperature control valve and control cabin trim air modulating valve, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(h) New Valve Identification and Replacement

For airplanes not identified in paragraph (g) of this AD with an original certificate of airworthiness or an original export certificate of airworthiness dated on or before the effective date of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD.

(1) Within 60 months after the effective date of this AD, perform a general visual inspection of the left temperature control valve and control cabin trim air modulating valve to determine the valve part numbers. A review of airplane maintenance records is acceptable in lieu of this inspection if the part numbers of the valves can be conclusively determined from that review.

(2) If the left temperature control valve or control cabin trim air modulating valve has part number 398908–4: Within 60 months after the effective date of this AD, replace the left temperature control valve or control cabin trim air modulating valve in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a valve having part number 398908–4, in either the left temperature control valve location or the control cabin trim air modulating valve location on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

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

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Julie Moon, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3571; email: *julie.moon@faa.gov.*

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 20, 2017 (82 FR 27417, June 15, 2017).

(i) Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(ii) [Reserved]

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

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

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

Issued on January 10, 2020.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00700 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 102

RIN 0991–AC0

Annual Civil Monetary Penalties Inflation Adjustment

AGENCY: Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and to make changes to reflect an amendment to the Federal Food, Drug, and Cosmetic Act by the Further Consolidated Appropriations Act, 2020 (effective January 1, 2020).

DATES: This rule is effective January 17, 2020.

FOR FURTHER INFORMATION CONTACT: David Dasher, Deputy Assistant Secretary, Office of Acquisitions, Office of the Assistant Secretary for Financial Resources, Room 536–H, Hubert Humphrey Building, 200 Independence Avenue SW, Washington DC 20201; 202–205–0706.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the ''2015 Act'') amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890 (1990)), which is intended to improve the effectiveness of civil monetary

penalties (CMPs) and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

The Department of Health and Human Services (HHS) lists the civil monetary penalty authorities and the penalty amounts administered by all of its agencies in tabular form in 45 CFR 102.3, which was issued in an interim final rule published in the September 6, 2016 **Federal Register** (81 FR 61538). Annual adjustments were subsequently published on February 3, 2017 (82 FR 9175), October 11, 2018 (83 FR 51369), and on November 5, 2019 (84 FR 59549).

The Further Consolidated Appropriations Act, 2020 (hereafter, 2020 Appropriations Act), created a new section 906(d)(5) in the Federal Food, Drug, and Cosmetic Act, codified at 21 U.S.C. 387f(d)(5), which increases the minimum age of sale of tobacco products and makes it unlawful for a retailer to sell a tobacco product to any person younger than 21 years old. H.R. 1865 Sec. 603. The 2020 Appropriations Act also amended the civil money penalty schedule codified in 21 U.S.C. 333 note to apply to violations of new section 906(d)(5). Accordingly, the description of 21 U.S.C. 333 note has been modified in the table to reflect these amendments. In addition, a technical error for an incorrect description of 42 U.S.C. 299c–(3)(d) was identified and is corrected below.

II. Calculation of Adjustment

The annual inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each civil penalty was most recently established or modified. In the December 16, 2019, Office of Management and Budget (OMB) Memorandum for the Heads of Executive Agencies and Departments, M–20–05, *Implementation of the Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,* OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2020, based on the CPI–U for the month of October 2019, not seasonally adjusted, is 1.01764. The multiplier is applied to each applicable penalty amount that was updated and published for FY 2019 and is rounded to the nearest dollar.

Using the 2020 multiplier, HHS adjusted all its applicable monetary penalties in 45 CFR 102.3.

III. Statutory and Executive Order Reviews

The 2015 Act requires Federal agencies to publish annual penalty inflation adjustments notwithstanding section 553 of the Administrative Procedure Act (APA).

Section 4(a) of the 2015 Act directs Federal agencies to publish annual adjustments no later than January 15th of each year thereafter. In accordance with section 553 of the APA, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to OMB's Memorandum M–20–05, the phrase ''notwithstanding section 553'' in section 4(b)(2) of the 2015 Act means that ''the public procedure the APA generally requires (*i.e.,* notice, an opportunity for comment, and a delay in effective date) is not required for agencies to issue regulations implementing the annual adjustment.''

Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication. Additionally, HHS finds good cause for issuing technical changes as a final rule without notice and comment because these changes only update the implementing regulation to restate the statute in light of amendments recently enacted into law.

Pursuant to OMB Memorandum M–20–05, HHS has determined that the annual inflation adjustment to the civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

IV. Effective Date

This rule is effective January 17, 2020. A delayed effective date for the technical changes to the table made to reflect the 2020 Appropriations Act is unnecessary because the new requirements are already effective as a matter of law (5 U.S.C. 553(d)(3)) and they do not establish additional regulatory obligations or impose additional burden on regulated entities. The adjusted civil monetary penalty amounts apply to penalties assessed on or after January 17, 2020, if the violation occurred on or after November 2, 2015. If the violation occurred prior to November 2, 2015, or a penalty was assessed prior to September 6, 2016, the pre-adjustment civil penalty amounts in effect prior to September 6, 2016, will apply.

List of Subjects in 45 CFR Part 102

Administrative practice and procedure, Penalties.

For reasons discussed in the preamble, the Department of Health and Human Services amends 45 CFR part 102 as follows:

PART 102—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Public Law 101–410, Sec. 701 of Public Law 114–74, 31 U.S.C. 3801–3812.

■ 2. Amend § 102.3 by revising the table to read as follows:

§ 102.3 Penalty adjustment and table.

* * * * *

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
21 U.S.C.:						
333(b)(2)(A)		FDA	Penalty for violations related to drug samples resulting in a conviction of any representative of manufacturer or distributor in any 10-year period.	2019	105,194	107,050
333(b)(2)(B)		FDA	Penalty for violation related to drug samples resulting in a conviction of any representative of manufacturer or distributor after the second conviction in any 10-yr period.	2019	2,146,800	2,184,670
333(b)(3)		FDA	Penalty for failure to make a report required by 21 U.S.C. 353(d)(3)(E) relating to drug samples.	2019	210,386	214,097
333(f)(1)(A)		FDA	Penalty for any person who violates a requirement related to devices for each such violation.	2019	28,413	28,914
			Penalty for aggregate of all violations related to devices in a single proceeding.	2019	1,894,261	1,927,676
333(f)(2)(A)		FDA	Penalty for any individual who introduces or delivers for introduction into interstate commerce food that is adulterated per 21 U.S.C. 342(a)(2)(B) or any individual who does not comply with a recall order under 21 U.S.C. 350l.	2019	79,875	81,284
			Penalty in the case of any other person other than an individual) for such introduction or delivery of adulterated food.	2019	399,374	406,419
			Penalty for aggregate of all such violations related to adulterated food adjudicated in a single proceeding.	2019	798,747	812,837
333(f)(3)(A)		FDA	Penalty for all violations adjudicated in a single proceeding for any person who violates 21 U.S.C. 331(jj) by failing to submit the certification required by 42 U.S.C. 282(j)(5)(B) or knowingly submitting a false certification; by failing to submit clinical trial information under 42 U.S.C. 282(j); or by submitting clinical trial information under 42 U.S.C. 282(j) that is false or misleading in any particular under 42 U.S.C. 282(j)(5)(D).	2019	12,103	12,316
333(f)(3)(B)		FDA	Penalty for each day any above violation is not corrected after a 30-day period following notification until the violation is corrected.	2019	12,103	12,316
333(f)(4)(A)(i)		FDA	Penalty for any responsible person that violates a requirement of 21 U.S.C. 355(o) (post-marketing studies, clinical trials, labeling), 21 U.S.C. 355(p) (risk evaluation and mitigation (REMS)), or 21 U.S.C. 355–1 (REMS).	2019	302,585	307,923
			Penalty for aggregate of all such above violations in a single proceeding.	2019	1,210,340	1,231,690
333(f)(4)(A)(ii)		FDA	Penalty for REMS violation that continues after written notice to the responsible person for the first 30-day period (or any portion thereof) the responsible person continues to be in violation.	2019	302,585	307,923
			Penalty for REMS violation that continues after written notice to responsible person doubles for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period.	2019	1,210,340	1,231,690
			Penalty for aggregate of all such above violations adjudicated in a single proceeding.	2019	12,103,404	12,316,908
333(f)(9)(A)		FDA	Penalty for any person who violates a requirement which relates to tobacco products for each such violation.	2019	17,547	17,857
			Penalty for aggregate of all such violations of tobacco product requirement adjudicated in a single proceeding.	2019	1,169,798	1,190,433
333(f)(9)(B)(i)(I)		FDA	Penalty per violation related to violations of tobacco requirements.	2019	292,450	297,609

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Penalty for aggregate of all such violations of tobacco product requirements adjudicated in a single proceeding.	2019	1,169,798	1,190,433
333(f)(9)(B)(i)(II)		FDA	Penalty in the case of a violation of tobacco product requirements that continues after written notice to such person, for the first 30-day period (or any portion thereof) the person continues to be in violation.	2019	292,450	297,609
			Penalty for violation of tobacco product requirements that continues after written notice to such person shall double for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period.	2019	1,169,798	1,190,433
			Penalty for aggregate of all such violations related to tobacco product requirements adjudicated in a single proceeding.	2019	11,697,983	11,904,335
333(f)(9)(B)(ii)(I)		FDA	Penalty for any person who either does not conduct post-market surveillance and studies to determine impact of a modified risk tobacco product for which the HHS Secretary has provided them an order to sell, or who does not submit a protocol to the HHS Secretary after being notified of a requirement to conduct post-market surveillance of such tobacco products.	2019	292,450	297,609
			Penalty for aggregate of for all such above violations adjudicated in a single proceeding.	2019	1,169,798	1,190,433
333(f)(9)(B)(ii)(II)		FDA	Penalty for violation of modified risk tobacco product post-market surveillance that continues after written notice to such person for the first 30-day period (or any portion thereof) that the person continues to be in violation.	2019	292,450	297,609
			Penalty for post-notice violation of modified risk tobacco product post-market surveillance shall double for every 30-day period thereafter that the tobacco product requirement violation continues for any 30-day period, but may not exceed penalty amount for any 30-day period.	2019	1,169,798	1,190,433
			Penalty for aggregate above tobacco product requirement violations adjudicated in a single proceeding.	2019	11,697,983	11,904,335
333(g)(1)		FDA	Penalty for any person who disseminates or causes another party to disseminate a direct-to-consumer advertisement that is false or misleading for the first such violation in any 3-year period.	2019	302,585	307,923
			Penalty for each subsequent above violation in any 3-year period.	2019	605,171	615,846
333 note		FDA	Penalty to be applied for violations of 21 U.S.C. 387f(d)(5) or of violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (e.g., violations of regulations in 21 CFR part 1140) with respect to a retailer with an approved training program in the case of a second regulation violation within a 12-month period.	2019	292	297
			Penalty in the case of a third violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 24-month period.	2019	584	594
			Penalty in the case of a fourth violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 24-month period.	2019	2,340	2,381
			Penalty in the case of a fifth violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 36-month period.	2019	5,849	5,952

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Penalty in the case of a sixth or subsequent violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 48-month period as determined on a case-by-case basis.	2019	11,698	11,904
			Penalty to be applied for violations of 21 U.S.C. 387f(d)(5) or of violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (e.g., violations of regulations in 21 CFR part 1140) with respect to a retailer that does not have an approved training program in the case of the first regulation violation.	2019	292	297
			Penalty in the case of a second violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 12-month period.	2019	584	594
			Penalty in the case of a third violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 24-month period.	2019	1,170	1,191
			Penalty in the case of a fourth violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 24-month period.	2019	2,340	2,381
			Penalty in the case of a fifth violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 36-month period.	2019	5,849	5,952
			Penalty in the case of a sixth or subsequent violation of 21 U.S.C. 387f(d)(5) or of the tobacco product regulations within a 48-month period as determined on a case-by-case basis.	2019	11,698	11,904
335b(a)		FDA	Penalty for each violation for any individual who made a false statement or misrepresentation of a material fact, bribed, destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document, failed to disclose a material fact, obstructed an investigation, employed a consultant who was debarred, debarred individual provided consultant services.	2019	445,846	453,711
			Penalty in the case of any other person (other than an individual) per above violation.	2019	1,783,384	1,814,843
360pp(b)(1)		FDA	Penalty for any person who violates any such requirements for electronic products, with each unlawful act or omission constituting a separate violation.	2019	2,924	2,976
			Penalty imposed for any related series of violations of requirements relating to electronic products.	2019	996,806	1,014,390
42 U.S.C				2019		
262(d)		FDA	Penalty per day for violation of order of recall of biological product presenting imminent or substantial hazard.	2019	229,269	233,313
263b(h)(3)		FDA	Penalty for failure to obtain a mammography certificate as required.	2019	17,834	18,149
300aa–28(b)(1)		FDA	Penalty per occurrence for any vaccine manufacturer that intentionally destroys, alters, falsifies, or conceals any record or report required.	2019	229,269	233,313
256b(d)(1)(B)(vi)		HRSA	Penalty for each instance of overcharging a 340B covered entity.	2019	5,781	5,883
299c–(3)(d)		AHRQ	Penalty for an establishment or person supplying information obtained in the course of activities for any purpose other than the purpose for which it was supplied.	2019	15,034	15,299
653(l)(2)	45 CFR 303.21(f)	ACF	Penalty for Misuse of Information in the National Directory of New Hires.	2019	1,542	1,569
262a(i)(1)	42 CFR 1003.910	OIG	Penalty for each individual who violates safety and security procedures related to handling dangerous biological agents and toxins.	2019	348,708	354,859

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Penalty for any other person who violates safety and security procedures related to handling dangerous biological agents and toxins.	2019	697,418	709,720
300jj–51		OIG	Penalty per violation for committing information blocking.	2019	1,063,260	1,082,016
1320a–7a(a)	42 CFR 1003.210(a)(1)	OIG	Penalty for knowingly presenting or causing to be presented to an officer, employee, or agent of the United States a false claim.	2019	20,504	20,866
			Penalty for knowingly presenting or causing to be presented a request for payment which violates the terms of an assignment, agreement, or PPS agreement.	2019	20,504	20,866
	42 CFR 1003.210(a)(2)		Penalty for knowingly giving or causing to be presented to a participating provider or supplier false or misleading information that could reasonably be expected to influence a discharge decision.	2019	30,757	31,300
	42 CFR 1003.210(a)(3)		Penalty for an excluded party retaining ownership or control interest in a participating entity.	2019	20,504	20,866
	42 CFR 1003.1010		Penalty for remuneration offered to induce program beneficiaries to use particular providers, practitioners, or suppliers.	2019	20,504	20,866
	42 CFR 1003.210(a)(4)		Penalty for employing or contracting with an excluded individual.	2019	20,504	20,866
	42 CFR 1003.310(a)(3)		Penalty for knowing and willful solicitation, receipt, offer, or payment of remuneration for referring an individual for a service or for purchasing, leasing, or ordering an item to be paid for by a Federal health care program.	2019	102,522	104,330
	42 CFR 1003.210(a)(1)		Penalty for ordering or prescribing medical or other item or service during a period in which the person was excluded.	2019	20,504	20,866
	42 CFR 1003.210(a)(6)		Penalty for knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider or supplier.	2019	102,522	104,330
	42 CFR 1003.210(a)(8)		Penalty for knowing of an overpayment and failing to report and return.	2019	20,504	20,866
	42 CFR 1003.210(a)(7)		Penalty for making or using a false record or statement that is material to a false or fraudulent claim.	2019	57,812	58,832
	42 CFR 1003.210(a)(9)		Penalty for failure to grant timely access to HHS OIG for audits, investigations, evaluations, and other statutory functions of HHS OIG.	2019	30,757	31,300
1320a–7a(b)		OIG	Penalty for payments by a hospital or critical access hospital to induce a physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits.	2019	5,126	5,216
			Penalty for physicians who knowingly receive payments from a hospital or critical access hospital to induce such physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits.	2019	5,126	5,216
	42 CFR 1003.210(a)(10)		Penalty for a physician who executes a document that falsely certifies home health needs for Medicare beneficiaries.	2019	10,252	10,433
1320a–7a(o)		OIG	Penalty for knowingly presenting or causing to be presented a false or fraudulent specified claim under a grant, contract, or other agreement for which the Secretary provides funding.	2016	10,000	10,176

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Penalty for knowingly making, using, or causing to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document required to directly or indirectly receive or retain funds provided pursuant to grant, contract, or other agreement.	2016	50,000	50,882
			Penalty for Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent specified claim under grant, contract, or other agreement.	2016	50,000	50,882
			Penalty for knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit funds or property with respect to grant, contract, or other agreement, or knowingly conceals or improperly avoids or decreases any such obligation.	2016	50,000 for each false record or statement, 10,000 per day.	53,231 for each false record statement, 10,646 per day.
			Penalty for failure to grant timely access, upon reasonable request, to the Inspector General (I.G.) for purposes of audits, investigations, evaluations, or other statutory functions of I.G. in matters involving grants, contracts, or other agreements.	2016	15,000	15,265
1320a–7e(b)(6)(A)	42 CFR 1003.810	OIG	Penalty for failure to report any final adverse action taken against a health care provider, supplier, or practitioner.	2019	39,121	39,811
1320b–10(b)(1)	42 CFR 1003.610(a)	OIG	Penalty for the misuse of words, symbols, or emblems in communications in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS.	2019	10,519	10,705
1320b–10(b)(2)	42 CFR 1003.610(a)	OIG	Penalty for the misuse of words, symbols, or emblems in a broadcast or telecast in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS.	2019	52,596	53,524
1395i–3(b)(3)(B)(ii)(1)	42 CFR 1003.210(a)(11)	OIG	Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2019	2,194	2,233
1395i–3(b)(3)(B)(ii)(2)	42 CFR 1003.210(a)(11)	OIG	Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2019	10,967	11,160
1395i–3(g)(2)(A)	42 CFR 1003.1310	OIG	Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2019	4,388	4,465
1395w–27(g)(2)(A)	42 CFR 1003.410	OIG	Penalty for a Medicare Advantage organization that substantially fails to provide medically necessary, required items and services.	2019	39,936	40,640
			Penalty for a Medicare Advantage organization that charges excessive premiums.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization that improperly expels or refuses to reenroll a beneficiary.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization that engages in practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2019	156,488	159,248
			Penalty per individual who does not enroll as a result of a Medicare Advantage organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2019	23,473	23,887
			Penalty for a Medicare Advantage organization misrepresenting or falsifying information to Secretary.	2019	156,488	159,248

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Penalty for a Medicare Advantage organization misrepresenting or falsifying information to individual or other entity.	2019	39,121	39,811
			Penalty for Medicare Advantage organization interfering with provider's advice to enrollee and non-managed care organization (MCO) affiliated providers that balance bill enrollees.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization that employs or contracts with excluded individual or entity.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization enrolling an individual in without prior written consent.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization transferring an enrollee to another plan without consent or solely for the purpose of earning a commission.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization failing to comply with marketing restrictions or applicable implementing regulations or guidance.	2019	39,121	39,811
			Penalty for a Medicare Advantage organization employing or contracting with an individual or entity who violates 1395w–27(g)(1)(A)–(J).	2019	39,121	39,811
1395w–141(i)(3)		OIG	Penalty for a prescription drug card sponsor that falsifies or misrepresents marketing materials, overcharges program enrollees, or misuse transitional assistance funds.	2019	13,669	13,910
1395cc(g)		OIG	Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities.	2019	5,317	5,411
1395dd(d)(1)	42 CFR 1003.510	OIG	Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has 100 beds or more.	2019	109,663	111,597
			Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has less than 100 beds.	2019	54,833	55,800
1395mm(i)(6)(B)(i)	42 CFR 1003.410	OIG	Penalty for a health maintenance organization (HMO) or competitive plan is such plan substantially fails to provide medically necessary, required items or services.	2019	54,833	55,800
			Penalty for HMOs/competitive medical plans that charge premiums in excess of permitted amounts.	2019	54,833	55,800
			Penalty for a HMO or competitive medical plan that expels or refuses to reenroll an individual per prescribed conditions.	2019	54,833	55,800
			Penalty for a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in future.	2019	219,327	223,196
			Penalty per individual not enrolled in a plan as a result of a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in the future.	2019	31,558	32,115
			Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to the Secretary.	2019	219,327	223,196
			Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to an individual or any other entity.	2019	54,833	55,800
			Penalty for failure by HMO or competitive medical plan to assure prompt payment of Medicare risk sharing contracts or incentive plan provisions.	2019	54,833	55,800
			Penalty for HMO that employs or contracts with excluded individual or entity.	2019	50,334	51,222

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1395nn(g)(3)	42 CFR 1003.310	OIG	Penalty for submitting or causing to be submitted claims in violation of the Stark Law's restrictions on physician self-referrals.	2019	25,372	25,820
1395nn(g)(4)	42 CFR 1003.310	OIG	Penalty for circumventing Stark Law's restrictions on physician self-referrals.	2019	169,153	172,137
1395ss(d)(1)	42 CFR 1003.1110	OIG	Penalty for a material misrepresentation regarding Medigap compliance policies.	2019	10,519	10,705
1395ss(d)(2)	42 CFR 1003.1110	OIG	Penalty for selling Medigap policy under false pretense.	2019	10,519	10,705
1395ss(d)(3)(A)(ii)	42 CFR 1003.1110	OIG	Penalty for an issuer that sells health insurance policy that duplicates benefits.	2019	47,357	48,192
			Penalty for someone other than issuer that sells health insurance that duplicates benefits.	2019	28,413	28,914
1395ss(d)(4)(A)	42 CFR 1003.1110	OIG	Penalty for using mail to sell a non-approved Medigap insurance policy.	2019	10,519	10,705
1396b(m)(5)(B)(i)	42 CFR 1003.410	OIG	Penalty for a Medicaid MCO that substantially fails to provide medically necessary, required items or services.	2019	52,596	53,524
			Penalty for a Medicaid MCO that charges excessive premiums.	2019	52,596	53,524
			Penalty for a Medicaid MCO that improperly expels or refuses to reenroll a beneficiary.	2019	210,386	214,097
			Penalty per individual who does not enroll as a result of a Medicaid MCO's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2019	31,558	32,115
			Penalty for a Medicaid MCO misrepresenting or falsifying information to the Secretary.	2019	210,386	214,097
			Penalty for a Medicaid MCO misrepresenting or falsifying information to an individual or another entity.	2019	52,596	53,524
			Penalty for a Medicaid MCO that fails to comply with contract requirements with respect to physician incentive plans.	2019	47,357	48,192
1396r(b)(3)(B)(ii)(I)	42 CFR 1003.210(a)(11)	OIG	Penalty for willfully and knowingly certifying a material and false statement in a Skilled Nursing Facility resident assessment.	2019	2,194	2,233
1396r(b)(3)(B)(ii)(II)	42 CFR 1003.210(a)(11)	OIG	Penalty for willfully and knowingly causing another individual to certify a material and false statement in a Skilled Nursing Facility resident assessment.	2019	10,967	11,160
1396r(g)(2)(A)(i)	42 CFR 1003.1310	OIG	Penalty for notifying or causing to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2019	4,388	4,465
1396r–8(b)(3)(B)	42 CFR 1003.1210	OIG	Penalty for the knowing provision of false information or refusing to provide information about charges or prices of a covered outpatient drug.	2019	189,427	192,768
1396r–8(b)(3)(C)(i)	42 CFR 1003.1210	OIG	Penalty per day for failure to timely provide information by drug manufacturer with rebate agreement.	2019	18,943	19,277
1396r–8(b)(3)(C)(ii)	42 CFR 1003.1210	OIG	Penalty for knowing provision of false information by drug manufacturer with rebate agreement.	2019	189,427	192,768
1396t(i)(3)(A)	42 CFR 1003.1310	OIG	Penalty for notifying home and community-based providers or settings of survey.	2019	3,788	3,855
11131(c)	42 CFR 1003.810	OIG	Penalty for failing to report a medical malpractice claim to National Practitioner Data Bank.	2019	22,927	23,331
11137(b)(2)	42 CFR 1003.810	OIG	Penalty for breaching confidentiality of information reported to National Practitioner Data Bank.	2019	22,927	23,331
299b–22(f)(1)	42 CFR 3.404	OCR	Penalty for violation of confidentiality provision of the Patient Safety and Quality Improvement Act.	2019	12,695	12,919
	45 CFR 160.404(b)(1)(i), (ii)	OCR	Penalty for each pre-February 18, 2009 violation of the Health Insurance Portability and Accountability Act (HIPAA) administrative simplification provisions.	2019	159	162
			Calendar Year Cap	2019	39,936	40,640

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1320(d)–5(a)	45 CFR 160.404(b)(2)(i)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the covered entity or business associate did not know and by exercising reasonable diligence, would not have known that the covered entity or business associate violated such a provision:			
			Minimum	2019	117	119
			Maximum	2019	58,490	59,522
			Calendar Year Cap	2019	1,754,698	1,785,651
	45 CFR 160.404(b)(2)(ii)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to reasonable cause and not to willful neglect:			
			Minimum	2019	1,170	1,191
			Maximum	2019	58,490	59,522
			Calendar Year Cap	2019	1,754,698	1,785,651
	45 CFR 160.404(b)(2)(iii)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or, by exercising reasonable diligence, would have known that the violation occurred:			
			Minimum	2019	11,698	11,904
			Maximum	2019	58,490	59,522
			Calendar Year Cap	2019	1,754,698	1,785,651
	45 CFR 160.404(b)(2)(iv)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or by exercising reasonable diligence, would have known that the violation occurred:			
			Minimum	2019	58,490	59,522
			Maximum	2019	1,754,698	1,785,651
			Calendar Year Cap	2019	1,754,698	1,785,651
263a(h)(2)(B) & 1395w–2(b)(2)(A)(ii).	42 CFR 493.1834(d)(2)(i)	CMS	Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy:			
			Minimum	2019	6,417	6,530
			Maximum	2019	21,039	21,410
	42 CFR 493.1834(d)(2)(ii)	CMS	Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy:			
			Minimum	2019	106	108
			Maximum	2019	6,311	6,422
300gg–15(f)	45 CFR 147.200(e)	CMS	Failure to provide the Summary of Benefits and Coverage.	2019	1,156	1,176
300gg–18	45 CFR 158.606	CMS	Penalty for violations of regulations related to the medical loss ratio reporting and rebating.	2019	116	118
1320a–7h(b)(1)	42 CFR 402.105(d)(5), 42 CFR 403.912(a) & (c).	CMS	Penalty for manufacturer or group purchasing organization failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests:			
			Minimum	2019	1,156	1,176
			Maximum	2019	11,562	11,766
			Calendar Year Cap	2019	173,436	176,495
1320a–7h(b)(2)	42 CFR 402.105(h), 42 CFR 403.912(b) & (c).	CMS	Penalty for manufacturer or group purchasing organization knowingly failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests:			

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Minimum	2019	11,562	11,766
			Maximum	2019	115,624	117,664
			Calendar Year Cap	2019	1,156,242	1,176,638
		CMS	Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility.	2019	115,624	117,664
1320a–7j(h)(3)(A)	42 CFR 488.446(a)(1), (2), & (3).	CMS	Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure.	2019	578	588
			Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure.	2019	1,735	1,766
			Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure.	2019	3,468	3,529
1320a–8(a)(1)		CMS	Penalty for an entity knowingly making a false statement or representation of material fact in the determination of the amount of benefits or payments related to old-age, survivors, and disability insurance benefits, special benefits for certain World War II veterans, or supplemental security income for the aged, blind, and disabled.	2019	8,457	8,606
			Penalty for violation of 42 U.S.C. 1320a–8(a)(1) if the violator is a person who receives a fee or other income for services performed in connection with determination of the benefit amount or the person is a physician or other health care provider who submits evidence in connection with such a determination.	2019	7,975	8,116
1320a–8(a)(3)		CMS	Penalty for a representative payee (under 42 U.S.C. 405(j), 1007, or 1383(a)(2)) converting any part of a received payment from the benefit programs described in the previous civil monetary penalty to a use other than for the benefit of the beneficiary.	2019	6,623	6,740
1320b–25(c)(1)(A)		CMS	Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility.	2019	231,249	235,328
1320b–25(c)(2)(A)		CMS	Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual.	2019	346,872	352,991
1320b–25(d)(2)		CMS	Penalty for a long-term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse.	2019	231,249	235,328
1395b–7(b)(2)(B)	42 CFR 402.105(g)	CMS	Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request.	2019	156	159
1395i–3(h)(2)(B)(ii)(I)	42 CFR 488.408(d)(1)(iii)	CMS	Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements:			
			Minimum	2019	110	112
			Maximum	2019	6,579	6,695
	42 CFR 488.408(d)(1)(iv)	CMS	Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
	42 CFR 488.408(e)(1)(iii)	CMS	Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements:			
			Minimum	2019	6,690	6,808
			Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(1)(iv)	CMS	Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(2)(ii)	CMS	Penalty per day and per instance for a Skilled Nursing Facility that has Category 3 noncompliance with Immediate Jeopardy:			
			Per Day (Minimum)	2019	6,690	6,808
			Per Day (Maximum)	2019	21,933	22,320
			Per Instance (Minimum)	2019	2,194	2,233
			Per Instance (Maximum)	2019	21,933	22,320
	42 CFR 488.438(a)(1)(i)	CMS	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day:			
			Minimum	2019	6,690	6,808
			Maximum	2019	21,933	22,320
	42 CFR 488.438(a)(1)(ii)	CMS	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day:			
			Minimum	2019	110	112
			Maximum	2019	6,579	6,695
	42 CFR 488.438(a)(2)	CMS	Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320
1395l(h)(5)(D)	42 CFR 402.105(d)(2)(i)	CMS	Penalty for knowingly, willfully, and repeatedly billing for a clinical diagnostic laboratory test other than on an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395l(i)(6)		CMS	Penalty for knowingly and willfully presenting or causing to be presented a bill or request for payment for an intraocular lens inserted during or after cataract surgery for which the Medicare payment rate includes the cost of acquiring the class of lens involved.	2019	4,208	4,282
1395l(q)(2)(B)(i)	42 CFR 402.105(a)	CMS	Penalty for knowingly and willfully failing to provide information about a referring physician when seeking payment on an unassigned basis.	2019	4,027	4,098
1395m(a)(11)(A)	42 CFR 402.1(c)(4), 402.105(d)(2)(ii).	CMS	Penalty for any durable medical equipment supplier that knowingly and willfully charges for a covered service that is furnished on a rental basis after the rental payments may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395m(a)(18)(B)	42 CFR 402.1(c)(5), 402.105(d)(2)(iii).	CMS	Penalty for any nonparticipating durable medical equipment supplier that knowingly and willfully fails to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1395m(b)(5)(C)	42 CFR 402.1(c)(6), 402.105(d)(2)(iv).	CMS	Penalty for any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge for radiologist services. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395m(h)(3)	42 CFR 402.1(c)(8), 402.105(d)(2)(vi).	CMS	Penalty for any supplier of prosthetic devices, orthotics, and prosthetics that knowing and willfully charges for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(a)(11)(A), that is in the same manner as 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395m(j)(2)(A)(iii)		CMS	Penalty for any supplier of durable medical equipment including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully distributes a certificate of medical necessity in violation of Section 1834(j)(2)(A)(i) of the Act or fails to provide the information required under Section 1834(j)(2)(A)(ii) of the Act.	2019	1,692	1,722
1395m(j)(4)	42 CFR 402.1(c)(10), 402.105(d)(2)(vii).	CMS	Penalty for any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for series billed other than on as assignment-related basis under certain conditions. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(j)(4) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395m(k)(6)	42 CFR 402.1(c)(31), 402.105(d)(3).	CMS	Penalty for any person or entity who knowingly and willfully bills or collects for any outpatient therapy services or comprehensive outpatient rehabilitation services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(k)(6) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395m(l)(6)	42 CFR 402.1(c)(32), 402.105(d)(4).	CMS	Penalty for any supplier of ambulance services who knowingly and willfully fills or collects for any services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(b)(18)(B)	42 CFR 402.1(c)(11), 402.105(d)(2)(viii).	CMS	Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(j)(2)(B)	42 CFR 402.1(c)	CMS	Penalty for any physician who charges more than 125% for a non-participating referral. (Penalties are assessed in the same manner as 42 U.S.C. 1320a–7a(a)).	2019	15,975	16,257

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1395u(k)	42 CFR 402.1(c)(12), 402.105(d)(2)(ix).	CMS	Penalty for any physician who knowingly and willfully presents or causes to be presented a claim for bill for an assistant at a cataract surgery performed on or after March 1, 1987, for which payment may not be made because of section 1862(a)(15). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(l)(3)	42 CFR 402.1(c)(13), 402.105(d)(2)(x).	CMS	Penalty for any nonparticipating physician who does not accept payment on an assignment-related basis and who knowingly and willfully fails to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality under 1842(l)(1)(A). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(m)(3)	42 CFR 402.1(c)(14), 402.105(d)(2)(xi).	CMS	Penalty for any nonparticipating physician charging more than $500 who does not accept payment for an elective surgical procedure on an assignment related basis and who knowingly and willfully fails to disclose the required information regarding charges and coinsurance amounts and fails to refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(n)(3)	42 CFR 402.1(c)(15), 402.105(d)(2)(xii).	CMS	Penalty for any physician who knowingly, willfully, and repeatedly bills one or more beneficiaries for purchased diagnostic tests any amount other than the payment amount specified by the Act. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(o)(3)(B)	42 CFR 414.707(b)	CMS	Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services pertaining to drugs or biologics by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395u(p)(3)(A)		CMS	Penalty for any physician or practitioner who knowingly and willfully fails promptly to provide the appropriate diagnosis codes upon CMS or Medicare administrative contractor request for payment or bill not submitted on an assignment-related basis.	2019	4,208	4,282
1395w–3a(d)(4)(A)	42 CFR 414.806	CMS	Penalty for a pharmaceutical manufacturer's misrepresentation of average sales price of a drug, or biologic.	2019	13,669	13,910
1395w–4(g)(1)(B)	42 CFR 402.1(c)(17), 402.105(d)(2)(xiii).	CMS	Penalty for any nonparticipating physician, supplier, or other person that furnishes physician services not on an assignment-related basis who either knowingly and willfully bills or collects in excess of the statutorily-defined limiting charge or fails to make a timely refund or adjustment. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1395w–4(g)(3)(B)	42 CFR 402.1(c)(18), 402.105(d)(2)(xiv).	CMS	Penalty for any person that knowingly and willfully bills for statutorily defined State-plan approved physicians' services on any other basis than an assignment-related basis for a Medicare/Medicaid dual eligible beneficiary. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2019	15,975	16,257
1395w–27(g)(3)(A); 1857(g)(3).	42 CFR 422.760(b); 42 CFR 423.760(b).	CMS	Penalty for each termination determination the Secretary makes that is the result of actions by a Medicare Advantage organization or Part D sponsor that has adversely affected an individual covered under the organization's contract.	2019	39,121	39,811
1395w–27(g)(3)(B); 1857(g)(3).		CMS	Penalty for each week beginning after the initiation of civil money penalty procedures by the Secretary because a Medicare Advantage organization or Part D sponsor has failed to carry out a contract, or has carried out a contract inconsistently with regulations.	2019	15,649	15,925
1395w–27(g)(3)(D); 1857(g)(3).		CMS	Penalty for a Medicare Advantage organization's or Part D sponsor's early termination of its contract.	2019	145,335	147,899
1395y(b)(3)(C)	42 CFR 411.103(b)	CMS	Penalty for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits not to enroll under a group health plan or large group health plan which would be a primary plan.	2019	9,472	9,639
1395y(b)(5)(C)(ii)	42 CFR 402.1(c)(20), 42 CFR 402.105(b)(2).	CMS	Penalty for any non-governmental employer that, before October 1, 1998, willfully or repeatedly failed to provide timely and accurate information requested relating to an employee's group health insurance coverage.	2019	1,542	1,569
1395y(b)(6)(B)	42 CFR 402.1(c)(21), 402.105(a).	CMS	Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form.	2019	3,383	3,443
1395y(b)(7)(B)(i)		CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2019	1,211	1,232
1395y(b)(8)(E)		CMS	Penalty for any non-group health plan that fails to identify claimants who are Medicare beneficiaries and provide information to the HHS Secretary to coordinate benefits and pursue any applicable recovery claim.	2019	1,211	1,232
1395nn(g)(5)	42 CFR 411.361	CMS	Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements.	2019	20,134	20,489
1395pp(h)	42 CFR 402.1(c)(23), 402.105(d)(2)(xv).	CMS	Penalty for any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries under certain conditions. (42 U.S.C. 1395(m)(18) sanctions apply here in the same manner, which is under 1395u(j)(2) and 1320a–7a(a)).	2019	15,975	16,257
1395ss(a)(2)	42 CFR 402.1(c)(24), 405.105(f)(1).	CMS	Penalty for any person that issues a Medicare supplemental policy that has not been approved by the State regulatory program or does not meet Federal standards after a statutorily defined effective date.	2019	54,832	55,799

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1395ss(d)(3)(A)(vi)(II)		CMS	Penalty for someone other than issuer that sells or issues a Medicare supplemental policy to beneficiary without a disclosure statement.	2019	28,413	28,914
			Penalty for an issuer that sells or issues a Medicare supplemental policy without disclosure statement.	2019	47,357	48,192
1395ss(d)(3)(B)(iv)		CMS	Penalty for someone other than issuer that sells or issues a Medicare supplemental policy without acknowledgement form.	2019	28,413	28,914
			Penalty for issuer that sells or issues a Medicare supplemental policy without an acknowledgement form.	2019	47,357	48,192
1395ss(p)(8)	42 CFR 402.1(c)(25), 402.105(e).	CMS	Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the National Association of Insurance Commissioners (NAIC) or Federal standards established by statute.	2019	28,413	28,914
	42 CFR 402.1(c)(25), 405.105(f)(2).	CMS	Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute.	2019	47,357	48,192
1395ss(p)(9)(C)	42 CFR 402.1(c)(26), 402.105(e).	CMS	Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits.	2019	28,413	28,914
	42 CFR 402.1(c)(26), 405.105(f)(3), (4).		Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits.	2019	47,357	48,192
1395ss(q)(5)(C)	42 CFR 402.1(c)(27), 405.105(f)(5).	CMS	Penalty for any person that fails to suspend the policy of a policyholder made eligible for medical assistance or automatically reinstates the policy of a policyholder who has lost eligibility for medical assistance, under certain circumstances.	2019	47,357	48,192
1395ss(r)(6)(A)	42 CFR 402.1(c)(28), 405.105(f)(6).	CMS	Penalty for any person that fails to provide refunds or credits as required by section 1882(r)(1)(B).	2019	47,357	48,192
1395ss(s)(4)	42 CFR 402.1(c)(29), 405.105(c).	CMS	Penalty for any issuer of a Medicare supplemental policy that does not waive listed time periods if they were already satisfied under a proceeding Medicare supplemental policy, or denies a policy, or conditions the issuances or effectiveness of the policy, or discriminates in the pricing of the policy base on health status or other specified criteria.	2019	20,104	20,459
1395ss(t)(2)	42 CFR 402.1(c)(30), 405.105(f)(7).	CMS	Penalty for any issuer of a Medicare supplemental policy that fails to fulfill listed responsibilities.	2019	47,357	48,192
1395ss(v)(4)(A)		CMS	Penalty someone other than issuer who sells, issues, or renews a Medigap Rx policy to an individual who is a Part D enrollee.	2019	20,503	20,865
			Penalty for an issuer who sells, issues, or renews a Medigap Rx policy who is a Part D enrollee.	2019	34,174	34,777
1395bbb(c)(1)	42 CFR 488.725(c)	CMS	Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted.	2019	4,388	4,465
1395bbb(f)(2)(A)(i)	42 CFR 488.845(b)(2)(iii) 42 CFR 488.845(b)(3)–(6); and 42 CFR 488.845(d)(1)(ii).	CMS	Maximum daily penalty amount for each day a home health agency is not in compliance with statutory requirements.	2019	21,039	21,410

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
	42 CFR 488.845(b)(3)		Penalty per day for home health agency's noncompliance (Upper Range):			
			Minimum	2019	17,883	18,198
			Maximum	2019	21,039	21,410
	42 CFR 488.845(b)(3)(i)		Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm.	2019	21,039	21,410
	42 CFR 488.845(b)(3)(ii)		Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm.	2019	18,934	19,268
	42 CFR 488.845(b)(3)(iii)		Penalty for an isolated incident of noncompliance in violation of established home health agency (HHA) policy.	2019	17,883	18,198
	42 CFR 488.845(b)(4)		Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Lower Range):			
			Minimum	2019	3,157	3,213
			Maximum	2019	17,883	18,198
	42 CFR 488.845(b)(5)		Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range):			
			Minimum	2019	1,052	1,071
			Maximum	2019	8,415	8,563
	42 CFR 488.845(b)(6)		Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey:			
			Minimum	2019	2,104	2,141
			Maximum	2019	21,039	21,410
			Penalty for each day of noncompliance (Maximum).	2019	21,039	21,410
	42 CFR 488.845(d)(1)(ii)		Penalty for each day of noncompliance (Maximum).	2019	21,039	21,410
1396b(m)(5)(B)	42 CFR 460.46	CMS	Penalty for Programs of All-Inclusive Care for the Elderly (PACE) organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment:			
			Minimum	2019	23,473	23,887
			Maximum	2019	156,488	159,248
			Penalty for a PACE organization that charges excessive premiums.	2019	39,121	39,811
			Penalty for a PACE organization misrepresenting or falsifying information to CMS, the State, or an individual or other entity.	2019	156,488	159,248
			Penalty for each determination the CMS makes that the PACE organization has failed to provide medically necessary items and services of the failure has adversely affected (or has the substantial likelihood of adversely affecting) a PACE participant.	2019	39,121	39,811
			Penalty for involuntarily disenrolling a participant.	2019	39,121	39,811
			Penalty for discriminating or discouraging enrollment or disenrollment of participants on the basis of an individual's health status or need for health care services.	2019	39,121	39,811
1396r(h)(3)(C)(ii)(I)	42 CFR 488.408(d)(1)(iii)	CMS	Penalty per day for a nursing facility's failure to meet a Category 2 Certification:			
			Minimum	2019	110	112
			Maximum	2019	6,579	6,695
	42 CFR 488.408(d)(1)(iv)	CMS	Penalty per instance for a nursing facility's failure to meet Category 2 certification:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(1)(iii)	CMS	Penalty per day for a nursing facility's failure to meet Category 3 certification:			

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
			Minimum	2019	6,690	6,808
			Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(1)(iv)	CMS	Penalty per instance for a nursing facility's failure to meet Category 3 certification:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(2)(ii)	CMS	Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320
	42 CFR 488.438(a)(1)(i)	CMS	Penalty per day for nursing facility's failure to meet certification (Upper Range):			
			Minimum	2019	6,690	6,808
			Maximum	2019	21,933	22,320
	42 CFR 488.438(a)(1)(ii)	CMS	Penalty per day for nursing facility's failure to meet certification (Lower Range):			
			Minimum	2019	110	112
			Maximum	2019	6,579	6,695
	42 CFR 488.438(a)(2)	CMS	Penalty per instance for nursing facility's failure to meet certification:			
			Minimum	2019	2,194	2,233
			Maximum	2019	21,933	22,320
1396r(f)(2)(B)(iii)(I)(c)	42 CFR 483.151(b)(2)(iv) and (b)(3)(iii).	CMS	Grounds to prohibit approval of Nurse Aide Training Program—if assessed a penalty in 1819(h)(2)(B)(i) or 1919(h)(2)(A)(ii) of ''not less than $5,000'' [Not civil monetary penalties (CMPs) authority, but a specific CMP amount (CMP at this level) that is the triggering condition for disapproval].	2019	10,967	11,160
1396r(h)(3)(C)(ii)(I)	42 CFR 483.151(c)(2)	CMS	Grounds to waive disapproval of nurse aide training program—reference to disapproval based on imposition of CMP ''not less than $5,000'' [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program].	2019	10,967	11,160
1396t(j)(2)(C)		CMS	Penalty for each day of noncompliance for a home or community care provider that no longer meets the minimum requirements for home and community care:			
			Minimum	2019	2	2
			Maximum	2019	18,943	19,277
1396u–2(e)(2)(A)(i)	42 CFR 438.704	CMS	Penalty for a Medicaid managed care organization that fails substantially to provide medically necessary items and services.	2019	39,121	39,811
			Penalty for Medicaid managed care organization that imposes premiums or charges on enrollees in excess of the premiums or charges permitted.	2019	39,121	39,811
			Penalty for a Medicaid managed care organization that misrepresents or falsifies information to another individual or entity.	2019	39,121	39,811
			Penalty for a Medicaid managed care organization that fails to comply with the applicable statutory requirements for such organizations.	2019	39,121	39,811
1396u–2(e)(2)(A)(ii)	42 CFR 438.704	CMS	Penalty for a Medicaid managed care organization that misrepresents or falsifies information to the HHS Secretary.	2019	156,488	159,248
			Penalty for Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status.	2019	156,488	159,248
1396u–2(e)(2)(A)(iv)	42 CFR 438.704	CMS	Penalty for each individual that does not enroll as a result of a Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status.	2019	23,473	23,887
1396u(h)(2)	42 CFR Part 441, Subpart I	CMS	Penalty for a provider not meeting one of the requirements relating to the protection of the health, safety, and welfare of individuals receiving community supported living arrangements services.	2019	21,933	22,320

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

January 17, 2020

	CFR [1]	HHS agency	Description [2]	Date of last penalty figure or adjustment [3]	2019 Maximum adjusted penalty ($)	2020 Maximum adjusted penalty ($) [4]
1396w–2(c)(1)		CMS	Penalty for disclosing information related to eligibility determinations for medical assistance programs.	2019	11,698	11,904
18041(c)(2)	45 CFR 150.315; 45 CFR 156.805(c).	CMS	Failure to comply with requirements of the Public Health Services Act; Penalty for violations of rules or standards of behavior associated with issuer participation in the federally-facilitated Exchange. (42 U.S.C. 300gg–22(b)(2)(C)).	2019	159	162
18081(h)(1)(A)(i)(II)	42 CFR 155.285	CMS	Penalty for providing false information on Exchange application.	2019	28,906	29,416
18081(h)(1)(B)	42 CFR 155.285	CMS	Penalty for knowingly or willfully providing false information on Exchange application.	2019	289,060	294,159
18081(h)(2)	42 CFR 155.260	CMS	Penalty for knowingly or willfully disclosing protected information from Exchange.	2019	28,906	29,416
31 U.S.C.:						
1352	45 CFR 93.400(e)	HHS	Penalty for the first time an individual makes an expenditure prohibited by regulations regarding lobbying disclosure, absent aggravating circumstances.	2019	20,134	20,489
			Penalty for second and subsequent offenses by individuals who make an expenditure prohibited by regulations regarding lobbying disclosure:			
			Minimum	2019	20,134	20,489
			Maximum	2019	201,340	204,892
			Penalty for the first time an individual fails to file or amend a lobbying disclosure form, absent aggravating circumstances	2019	20,134	20,489
			Penalty for second and subsequent offenses by individuals who fail to file or amend a lobbying disclosure form, absent aggravating circumstances:			
			Minimum	2019	20,134	20,489
			Maximum	2019	201,340	204,892
	45 CFR Part 93, Appendix A	HHS	Penalty for failure to provide certification regarding lobbying in the award documents for all sub-awards of all tiers:			
			Minimum	2019	20,134	20,489
			Maximum	2019	201,340	204,892
			Penalty for failure to provide statement regarding lobbying for loan guarantee and loan insurance transactions:			
			Minimum	2019	20,134	20,489
			Maximum	2019	201,340	204,892
3801–3812	45 CFR 79.3(a)(1)(iv)	HHS	Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department.	2019	10,520	10,706
	45 CFR 79.3(b)(1)(ii)		Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department.	2019	10,520	10,706

[1] Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.

[2] The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.

[3] Statutory or Inflation Act Adjustment.

[4] The cost of living multiplier for 2020, based on the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October 2019, not seasonally adjusted, is 1.01764, as indicated in OMB Memorandum M–20–05, "Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015" (December 16, 2019).

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–00738 Filed 1–15–20; 4:15 pm]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155 and 156

[CMS–9922–F]

RIN 0938–AT53

Patient Protection and Affordable Care Act; Exchange Program Integrity

Correction

In rule document 2019–27713, appearing on pages 71674 through 71711, in the issue of Friday, December 27, 2019 make the following correction:

§ 156.280 [Corrected]

On page 71710, in the third column, in the second paragraph from the bottom of the page, on the second line, ''June 27, 2019'' should read ''June 27, 2020''.

[FR Doc. C1–2019–27713 Filed 1–16–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02; RTID 0648–XY067]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2020 Pacific cod total allowable catch allocated to catcher vessels greater than or equal to 60 feet (18.3m) LOA using pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 15, 2020, through 1200 hours, A.l.t., September 1, 2020.

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

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

The A season apportionment of the 2020 Pacific cod total allowable catch (TAC) allocated to catcher vessels greater than or equal to 60 feet (18.3m) LOA using pot gear in the BSAI is 5,924 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and inseason adjustment (85 FR 19, January 2, 2020).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2020 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels greater than or equal to 60 feet (18.3m) LOA using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3m) LOA using pot gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3m) LOA using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 13, 2020.

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

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

Authority: 16 U.S.C. 1901 *et seq.*

Dated: January 14, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–00724 Filed 1–14–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 12
Friday, January 17, 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.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 19

[Docket No. DHS–2019–0049]

RIN 1601–AA93

Equal Participation of Faith-Based Organizations in DHS's Programs and Activities: Implementation of Executive Order 13831

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The rule proposes to amend Department of Homeland Security (Department or DHS) regulations to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, to clarify the Department's guidance documents for financial assistance in regard to faith-based organizations, and to eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of Federal law, including the First Amendment to the Constitution, and the Religious Freedom Restoration Act.

DATES: Comments must be received by DHS on or before February 18, 2020.

ADDRESSES: You may submit comments identified by docket DHS–2019–0049. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Peter Mina, Deputy Officer for Programs and Compliance, Office for Civil Rights and Civil Liberties, Department of Homeland Security, Washington, DC 20528, 202–401–1474 (phone), 202–401–0470 (TTY).

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

DHS encourages you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice of proposed rulemaking for alternate instructions. Also, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

All comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

II. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that ''private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives, with primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (Dec. 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Order.

Consistent with Executive Order 13279, the Department issued a notice of proposed rulemaking, *Nondiscrimination in Matters Pertaining to Faith-Based Organizations,* 73 FR 2187 (Jan. 14, 2008); however, the Department did not issue a final rule related to the participation of faith-based organizations in the Department's programs prior to 2016.

President Obama maintained President Bush's program but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (Nov. 17, 2010). Executive Order 13559 made various changes to Executive Order 13279 including: Making minor and substantive textual

changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the faith-based provider give notice of potential referral to the potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, defining ''indirect assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary.

Unlike most of the other agencies affected by the Executive Orders, the Department did not issue final regulations related to the participation of faith-based organizations in the Department programs prior to 2016. In 2015, the Department issued a supplemental notice of proposed rulemaking (SNPRM), *Nondiscrimination in Matters Pertaining to Faith-Based Organizations,* 80 FR 47284 (Aug. 6, 2015), in concert with other agencies. The SNPRM addressed comments received in response to the 2008 notice of proposed rulemaking and proposed additional changes to address Executive Order 13559.

In 2016, the Department in concert with eight other Federal agencies, published its final rule, *Nondiscrimination in Matters Pertaining to Faith-based Organizations,* 81 FR 19353 (April 4, 2016), codified at 6 CFR part 19, which established regulations to implement Executive Order 13279, as amended by Executive Order 13559. The rules required not only that faith-based providers give the notice of the right to an alternative provider specified in Executive Order 13559, but also required faith-based providers, but not other providers, to give written notice to beneficiaries and potential beneficiaries of programs funded with direct Federal financial assistance of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activities must be voluntary and that they must be provided separately from the federally funded activity, and that beneficiaries may report violations.

Following issuance of the final rule in 2016, the Department provided guidance and resources to assist faith-based and other neighborhood organizations receiving financial assistance to support social service programs, as well as intermediaries (such as State administering agencies), in understanding and complying with the regulation, including but not limited to model notices of beneficiary rights and beneficiary referral request forms.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). Executive Order 13798 states that ''[f]ederal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.''

Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (Oct. 26, 2017) (the ''Attorney General's Memorandum on Religious Liberty''). The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing government-funded social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.''

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships'' in those previous Orders to the ''White House Faith and Opportunity Initiative;'' changed the way that initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Community Initiatives'' to change those names to ''Centers for Faith and Opportunity Initiatives;'' and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' Executive Order 13831 also eliminated the alternative provider requirement and requirement of notice thereof in Executive Order 13559 described above.

Alternative Provider and Alternative Provider Notice Requirement

Executive Order 13831 deleted the requirement in Executive Order 13559 that faith-based social services providers refer beneficiaries who object to receiving services from them to an alternative provider. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, entitled ''Fundamental Principles,'' by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: ''If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.'' Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary ''receives written notice of the protections *set forth in this subsection* prior to enrolling on or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. The Department has revised its regulations to conform to these provisions. 6 CFR 19.6, 19.7.

The alternative provider provisions of Executive Order 13559, which Executive Order 13831 removed, were not required by the Constitution or any applicable law. Indeed, they are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations and with the Attorney General's Memorandum on Religious Liberty.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017) (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520, 533 (1993) (alteration is original)): ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' '' The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.''' *Id.* at 2019 (quoting *McDaniel* v. *Paty,* 435 U.S. 618 (1978) (plurality opinion) (internal citations omitted); *see also Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''The religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); Attorney General's Memorandum on Religious Liberty, principle 6 (''Government may not target religious individuals or entities for special disabilities based on their religion.'').

Applying the alternative provider requirement categorically to all faith-based providers and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.* Under RFRA, where the government substantially burdens an entity's exercise of religion, the government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). The *World Vision OLC* opinion makes clear that when a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See* Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act, 31 O.L.C. 162, 169–71, 174–83 (June 29, 2007).

Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. See *Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of the alternative provider requirement, Part 19 as most recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers of services funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in any explicitly religious activities must be voluntary and separate in time or space from activities funded with direct Federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, the Orders clearly set forth the underlying requirements of nondiscrimination, voluntariness, the holding of religious activities separate in time or place from any federally funded activity, and the right to file complaints of violations. Faith-based providers of social services, like other providers of social services, are required to sign assurances that they will follow the law and the requirements of grants and contracts they receive. *See, e.g.,* 28 CFR 38.7. There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell* v. *Helms,* 530 U.S. 793, 856–57 (2000) (O'Connor, J., concurring in judgment) (noting that in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction.''). There is thus no need for prophylactic protections that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance[.] '' 75 FR 71319, 71321 (Nov. 22, 2010). Following issuance of the Working Group's report, a final rule was issued to amend existing regulations to make that distinction, and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR 19355, 19358 (Apr. 4, 2016). In so doing, the final rule attempted to accurately capture the definition of ''indirect'' aid that the U.S. Supreme Court employed in *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002). *See* 81 FR 19355, 19361–62 (Apr. 4, 2016).

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—*i.e.,* an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,*

parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. *Id.* at 656–58. In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' *Id.* at 658.

The final rule issued after the Working Group's report included, among its criteria for indirect Federal financial assistance, a requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance. *See* 81 FR 19355, 19407–19426 (Apr. 4, 2016). In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

Overview of Proposed Rule

The Department proposes to amend Part 19 to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831, and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend Part 19 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social services providers refer beneficiaries objecting to receiving services from them to an alternative provider.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on non-faith-based organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive Federal funding. The language would clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the Constitution.

Finally, the proposed rule would directly refer to the definition of ''religious exercise'' incorporated in RFRA and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

Explanations for Proposed Amendments to 6 CFR Part 19

§ 19.2 Definitions

Section 19.2 ''Direct Federal financial assistance or Federal financial assistance provided directly'' is proposed to be changed in order to provide clarity.

Section 19.2 ''Financial assistance'' is proposed to be changed in accordance with Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002).

Section 19.2 ''Indirect Federal financial assistance or Federal financial assistance provided indirectly'' (2) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align the text more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

A new definition of ''religious exercise'' is proposed to be added to Section 19.2 to explain that such term has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A),'' thereby aligning the text with the definition used RFRA and with the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc–5(7)(A). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.3 Equal Ability for Faith-Based Organizations To Seek and Receive Financial Assistance Through DHS Social Service Programs

Section 19.3(a) is proposed to be changed in order to align it more closely with RFRA by recognizing that a reasonable accommodation may be appropriate or required for faith-based organizations participating in DHS social service programs. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

Section 19.3(b) is proposed to be changed to align the text more closely with the First Amendment and with RFRA by recognizing that the government may not discriminate for or against an organization because of that organization's religious exercise any more than it can do so based on the organization's religious character or affiliation. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017)); principles 2, 3, 5–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018). It also will require certain notices or

announcements of award opportunities, awards, or contracts.

Section 19.3(e) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align it more closely with RFRA by recognizing the possibility of a reasonable religious accommodation. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion). To be reasonable, of course, any such accommodation must comply with the applicable requirements of federal law, including the Establishment Clause.

Section 19.3(f) is proposed to be added in order to align the text more closely with the First Amendment and with RFRA by recognizing that faith-based providers shall not be required to provide notices or assurances where they are not required of non-faith-based providers. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.4 Explicitly Religious Activities

Section 19.4(b) is proposed to be changed in order to clarify the text by eliminating extraneous language, and to align it more closely with Exec. Order No. 13559, 75 FR 71319 (Nov. 22, 2010). It is not clear what import the requirement that explicitly religious activities be ''[c]learly distinct from programs specifically supported by direct financial assistance'' would have given the requirement that they must be offered separately, in time or location, from the programs, activities, or services supported by direct DHS financial assistance. DHS accordingly thinks it better to simply align the text with the requirements in the Executive Order.

Section 19.4(c) is proposed to be changed in order to clarify the text and align it more closely with the First Amendment and with RFRA by once again recognizing the possibility of a reasonable accommodation for faith-based organizations participating in DHS social service programs. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.5 Nondiscrimination Requirements

Section 19.5 is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by making clear that an organization receiving indirect financial assistance is not required to make the attendance requirements of its program optional for a beneficiary who has chosen to expend indirect aid on that program. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002)); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.6 How To Prove Nonprofit Status

Section 19.6 is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by deleting the notice requirement. *See, e.g., See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018). In its place, DHS is inserting a new provision that identifies how nonprofit status may be determined when such status is required for participation in its programs. This new provision includes an accommodates for organizations that would qualify as 501(c)(3) nonprofit organizations but that have a sincere religious objection to so registering, allowing such organizations to provide evidence that they would so qualify. If an entity has a sincerely-held religious belief that it cannot apply for status as a 501(c)(3) tax-exempt entity, it may provide evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under the Department's criteria.

§ 19.7 Beneficiary Protections: Referral Requirements

Section 19.7 is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by eliminating the referral requirement. *See, e.g., See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

§ 19.8 Independence of Faith-Based Organizations

Section 19.8 is proposed to be changed in order to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA by providing more detail about the autonomy from government that a faith-based organization retains while participating in government programming. *See, e.g.,* Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.11 Nondiscrimination Among Faith-Based Organizations

Section 19.11 is proposed to be added in order to align the text more closely with the First Amendment by making clear that these provisions relating to nondiscrimination toward faith-based organizations should not be construed to advantage or disadvantage historically recognized religions or sects over other religions or sects. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

Appendix A and Appendix B

The Department proposes that Appendix A be changed and that Appendix B be added to align the text more closely with the First Amendment and with RFRA by deleting the notice and referral requirements that solely burdened faith-based organizations and instead requiring notices of the terms on which faith-based organizations may generally participate in DHS funded programs. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017)); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

III. Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Planning and Review

This NPRM has been drafted in accordance with Executive Order 13563 of January 18, 2011 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and Executive Order 12866 of September 30, 1993 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review. Executive Order 13563 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

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

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

The Department has also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

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

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

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

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

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. 76 FR 3821, 3821 (Jan. 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' *Id.* OIRA of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, OIRA, Re: Executive Order 13563, ''Improving Regulation and Regulatory Review,'' at 1 (Feb. 2, 2011), available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf.*

The Department is issuing this proposed regulation upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, the Department selected the approach that it believes maximizes net benefits. Based on the analysis that follows, the Department believes that the proposed regulation is consistent with the principles in Executive Order 13563. It is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements on those organizations. The Department has determined in addition that this proposed action would result in benefits to beneficiaries, described in more detail below.

The Department also has determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs and cost savings associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559, and those determined to be necessary for administering the Department's programs and activities. For example, the Department recognizes that the removal of the notice and referral requirements could impose some costs on beneficiaries who may now need to investigate alternative providers on their own if they object to the religious character of a potential social service provider. The Department invites comment on any information that it could use to quantify this potential cost. The Department also notes a quantifiable cost savings of the removal of the notice and referral requirements, which the Department previously estimated as imposing a cost of no more than $200 per organization per year. 81 FR 19379 (Apr. 4, 2016). The Department invites comment on any data by which it could assess the actual implementation costs of the notice and referral requirement—including any estimates of staff time spent on compliance with the requirement, in addition to the printing costs for the notices referenced above—and thereby accurately quantify the cost savings of removing these requirements.

In terms of benefits, the Department recognizes a non-quantified benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran.* The Department also recognizes a non-quantified benefit to grant recipients and beneficiaries alike that comes from

increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the Federal Government. Beneficiaries may also benefit from the increased capacity of faith-based social-service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace once relieved of the concern of excessive governmental involvement.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's interim guidance, issued on April 5, 2017, *https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation* explains that for Fiscal Year 2017 the above requirements only apply to each new ''significant regulatory action that imposes costs.'' This proposed rule is expected to be an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Department has not prepared a regulatory flexibility analysis.

Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132: Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments with the suggestions.

Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 6 CFR Part 19

Civil rights, Government contracts, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, DHS proposes to revise part 19 of chapter I of Title 6 of the Code of Federal Regulations to read as follows:

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

■ 1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 107–296; E.O. 13279, 67 FR 77141; E.O. 13403, 71 FR 28543; E.O. 13498, 74 FR 6533; E.O. 13559, 75 FR 71319; and E.O. 13831, 83 FR 20715.

■ 2. Amend § 19.2 by:

■ a. Revising the definition of ''Direct Federal financial assistance or Federal financial assistance provided directly''.

■ b. Amending the definition of ''Financial assistance'' by adding a sentence to the end of the definition.

■ c. Revising the definition of ''Indirect Federal financial assistance or Federal

financial assistance provided indirectly''.

■ d. Adding the definitions ''Intermediary'' and ''Religious exercise'' in alphabetical order.

The revisions and additions read as follows:

§ 19.2 Definitions.

* * * * *

Direct Federal financial assistance or Federal financial assistance provided directly means financial assistance received by an entity selected by the government or an intermediary (under this part) to carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''Federal financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' or ''Federal financial assistance provided indirectly''.

* * * * *

Financial Assistance * * *

Financial assistance does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

Indirect Federal financial assistance or Federal financial assistance provided indirectly means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider. Federal financial assistance provided to an organization is considered ''indirect'' when:

(1) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion; and

(2) The organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

* * * * *

Religious exercise has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

■ 3. Amend § 19.3 by:

■ a. In paragraph (a), remove ''other organization,'' and in its place ''other organization and considering any religious accommodations appropriate under the Constitution or other provisions of federal law, including but not limited to 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment'' ''

■ b. In paragraph (b), remove ''character, or affiliation.'' and in its place ''character, affiliation, or exercise. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendices A and B, respectively, to this part.''.

■ c. Revise paragraph (e).

■ d. Add paragraph (f).

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

* * * * *

(e) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, subject to any reasonable religious accommodation, and other applicable requirements governing the conduct of DHS-funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or an intermediary in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because such organization is motivated or influenced by religious faith to provide social services or because of its religious exercise or affiliation.

* * * * *

(f) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by DHS or an intermediary in administering financial assistance from DHS shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations.

■ 4. Amend § 19.4 by revising paragraphs (b) and (c) to read as follows:

§ 19.4 Explicitly religious activities.

* * * * *

(b) Organizations receiving direct financial assistance from DHS for social service programs are free to engage in explicitly religious activities, but such activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from DHS, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(c) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, subject to any religious accommodations appropriate under the Constitution or other provisions of federal law, including but not limited to 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment reasonable religious accommodation, and in accordance with all other applicable requirements governing the conduct of DHS-funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or a State or local government in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because such organization is motivated or influenced by religious faith to provide social services or because of its religious exercise or affiliation.

§ 19.5 [Amended]

■ 5. Amend § 19.5 by removing ''organization's program.'' and adding in its place ''organization's program and may require attendance at all activities that are fundamental to the program.''.

■ 6. Revise § 19.6 to read as follows:

§ 19.6 How to prove nonprofit status.

In general, DHS does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under DHS social service programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate DHS program office to determine the scope of any applicable requirements. In DHS social service programs in which an applicant for funding must show that it is a nonprofit

organization, the applicant may do so by any of the following means:

(a) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(b) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(1) The organization is a nonprofit organization operating within the State; and

(2) No part of its net earnings may benefit any private shareholder or individual;

(c) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;

(d) Any item described in paragraphs (a) through (c) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or

(e) For an entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (a) through (d) of this section.

§ 19.7 [Removed and Reserved]

■ 7. Remove and reserve § 19.7:

■ 8. Revise § 19.8 to read as follows:

§ 19.8 Independence of faith-based organizations.

(a) A faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance will retain its autonomy; right of expression; religious character; authority over its governance; and independence from Federal, State, and local governments; and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance contrary to § 19.4.

(b) Faith-based organizations may use space in their facilities to provide social services using financial assistance from DHS without removing, concealing, or altering religious articles, texts, art, or symbols.

(c) A faith-based organization using financial assistance from DHS for social service programs retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its organization's mission statements and other governing documents.

■ 9. Add a new § 19.11 to read as follows:

§ 19.11 Nondiscrimination Among Faith-Based Organizations

Neither DHS nor any State or local government or other intermediary receiving funds under any DHS social service program shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

■ 10. Revise Appendix A to Part 19 to read as follows:

Appendix A to Part 19—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and subject to the protections and requirements of part 19 of Title 6 of the CFR and 42 U.S.C. 2000bb *et seq.* DHS will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 11. Add Appendix B to Part 19 to read as follows:

Appendix B to Part 19: Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DHS to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Chad F. Wolf,

Acting Secretary of Homeland Security.

[FR Doc. 2019–28142 Filed 1–16–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

RIN 0510–AA08

Equal Opportunity for Religious Organizations in U.S. Department of Agriculture Programs: Implementation of Executive Order 13831

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The rule proposes to amend the U.S. Department of Agriculture (USDA or Department) regulation that covers equal opportunity for participation of faith-based organizations in USDA programs and to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, clarify the Department's guidance documents for financial assistance in regard to faith-based organizations, and eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of federal law, including the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act (RFRA) 42 U.S.C. 2000bb *et seq.*

DATES: Written comments must be postmarked and electronic comments must be submitted on or before February 18, 2020. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference the Regulatory Identification Number 0510–AA08 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Emily Tasman, Attorney-Advisor, USDA, Office of the General Counsel, Room 107–W, J.L. Whitten Federal Building, 1400 Independence Avenue SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Emily Tasman, USDA, Office of General Counsel, (202) 720–720–3351, *emily.tasman@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on *http://www.regulations.gov.* Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

Shortly after taking office, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that ''private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives that would have primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 asked specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social services programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Order. Consistent with Executive Order 13279, the Department of Agriculture promulgated regulations at 7 CFR part 16 (''Part 16'').

On March 5, 2004, the Department published a proposed rule, 69 FR 10354, to adopt Departmental regulations to eliminate unwarranted barriers to the participation of faith-based organizations in the Department's assistance programs. After receiving 22 different comments from both individuals and organizations, the Department subsequently published a final rule on July 9, 2004, 69 FR 41375, adding Departmental regulations to ensure that faith-based organizations could compete on an equal footing with other organizations for Department assistance consistent with the requirements of the U.S. Constitution, including the First Amendment.

President Obama maintained President Bush's program but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). Executive Order 13559 made various changes to Executive Order 13279 including the following: Making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a

provision requiring that the first provider give notice of this right to the potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social services providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, including the Department's Part 16, defining ''indirect assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary. 7 CFR 16.2(b).

Accordingly, on August 6, 2015, the Department published a proposed rule, 80 FR 47244, to add definitions for ''USDA direct assistance,'' ''USDA indirect assistance,'' and ''intermediary.'' On April 4, 2016, the Department, as part of a multi-agency final rule, 81 FR 19353, implemented Executive Order 13559 by adding new protections for beneficiaries of federally funded social service programs while also requiring decisions about federal financial assistance to be based solely on merit, without regard to an organization's religious affiliation. Following issuance of the final rule in 2016, the Department released detailed guidance providing faith-based and other neighborhood organizations receiving assistance from USDA with instructions (including a sample USDA beneficiary rights notice) on nondiscrimination requirements for recipients of direct and indirect USDA financial assistance. The Department prohibited certain uses of direct USDA financial assistance. USDA also provided for separation requirements for faith based organizations' religious activities after receiving an award. Finally, USDA's regulation ensured beneficiaries did not face discrimination based on religion, a religious belief, or a refusal to participate in a religious practice.

President Trump enhanced the protections for faith-based providers in the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). Executive Order 13798 stated that ''[f]ederal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It further directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.'' Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (October 26, 2017) (the ''Attorney General's Memorandum on Religious Liberty'').

The Attorney General's Memorandum on Religious Liberty stressed that individuals and organizations do not give up religious liberty protections by providing social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.''

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships'' in those previous Orders to the ''White House Faith and Opportunity Initiative''; changed the way that initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Community Initiatives'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' Executive Order 13831 also eliminated the alternative provider requirement and requirement of notice thereof in Executive Order 13559 described above.

Alternative Provider and Alternative Provider Notice Requirement

Executive Order 13831 removed the requirement in Executive Order 13559 that faith-based social services providers refer beneficiaries who object to receiving services from them to an alternative provider. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, entitled ''Fundamental Principles,'' by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: ''If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.'' Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary ''receives written notice of the protections *set forth in this subsection* prior to enrolling on or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not to all of the protections in section 2. The Department of Agriculture has revised its regulations to conform to these provisions. 7 CFR 16.4

The alternative provider provisions of Executive Order 13559, which Executive Order 13831 removed, were not required by the U.S. Constitution or any applicable law. Indeed, they are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations and with the Attorney General's Memorandum on Religious Liberty.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017) (*Trinity Lutheran*): ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' '' (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520, 533 (internal quotation marks omitted)). The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.' '' *Id.* at 2019 (quoting *McDaniel* v. *Paty,* 435 U.S. 618 (1978) (plurality opinion) (internal citations omitted); *see also Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''The religious nature of a recipient

should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); Attorney General's Memorandum on Religious Liberty, principle 6 (''Government may not target religious individuals or entities for special disabilities based on their religion.'').

Applying the alternative provider requirement categorically to all faith-based providers and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under RFRA. Under RFRA, where the Government substantially burdens an entity's exercise of religion, the Government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). When a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act,* 31 O.L.C. 162, 169–71, 174–83 (June 29, 2007). Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. *See Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

Although Executive Order 13559's requirement of notice to beneficiaries was limited to notice of the alternative provider requirement, Part 16 as most recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers of services funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, the Orders clearly set forth the underlying requirements of nondiscrimination, voluntariness, the holding of religious activities separate in time or place from any federally funded activity, and the right to file complaints of violations. Faith-based providers of social services, like other providers of social services, are required to sign assurances that they will follow the law and the requirements of grants and contracts they receive. (*See, e.g.,* 28 CFR 38.7). There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell* v. *Helms,* 530 U.S. 793, 856–57 (2000) (O'Connor, J. concurring) (noting that in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction.''). There is thus no need for additional notice procedures that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance[.]'' 75 FR 71319, 71321 (2010). Following issuance of the Working Group's report, a final rule was issued to amend existing regulations to make that distinction, and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR 19355, 19358 (2016). In so doing, the final rule attempted to capture the definition of ''indirect'' aid that the U.S. Supreme Court employed in *Zelman* v. *Simmons–Harris,* 536 U.S. 639 (2002). *See* 81 FR 19355, 19361–62 (2016).

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—*i.e.,* an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,* parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (internal quotation marks omitted). Although the Court noted the availability of secular providers, it specifically declined to make its approval of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. *Id.* at 656–58. In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time,

most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' *Id.* at 658.

The final rule issued after the Working Group's report included among its criteria for indirect Federal financial assistance a requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance. *See* 81 FR 19355, 19407 (2016). In other words, the rule amended regulations to make approval of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

Overview of Proposed Rule

The Department proposes to amend Part 16 to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend part 16 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social service providers refer beneficiaries objecting to receiving services from them to an alternative provider.

This proposed rule would also clarify that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on non-faith-based organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and non-faith based organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding. The language will clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise clauses of the U.S. Constitution.

Finally, the proposed rule would directly refer to the definition of ''religious exercise'' incorporated in RFRA, and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

Explanations for the Proposed Amendments to 7 CFR Part 16

Section 16.1

Purpose and Applicability

Section 16.1(b) is proposed to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.2

Definitions

Section 16.2(a) is proposed to be changed to clarify the text and make it more consistent with other federal regulatory definitions. *See, e.g.,* 28 CFR. 38.3.

Section 16.2(b) is proposed to provide clarity.

Section 16.2(c) is proposed to provide clarity.

Section 16.2(d) is proposed to be changed to clarify the text and make it more consistent with other federal regulatory definitions. *See, e.g.,* 28 CFR 38.3. The proposed changes will also align the text more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

Section 16.2(e) is proposed to provide clarity.

Section 16.2(f) is proposed to be changed to align the text more closely with the definitions used in the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.,* and with the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc–5(7)(A). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.3

Faith-Based Organizations and Federal Financial Assistance

Section 16.3(a) is proposed to be changed to clarify the text by eliminating extraneous language and to align it more closely with RFRA. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

Section 16.3(b) is proposed to be changed to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR. 49668 (October 26, 2017).

Section 16.3(c) is proposed to be changed to clarify the text.

Section 16.3(d) is proposed to be changed to clarify the text and make it more consistent with other federal regulations. *See, e.g.,* 28 CFR 38.5. The proposed changes will also clarify the text and align it more closely with the First Amendment of the U.S. Constitution and with RFRA. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 6, 7, and 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.3(e) is proposed to be changed to provide clarity.

Section 16.3(f) is proposed to be changed to provide clarity.

Section 16.4

Responsibilities of Participating Organizations

Section 16.4(a) is proposed to be changed to align the text more closely with the First Amendment and with

RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR. 49668 (October 26, 2017).

Section 16.4(b) is proposed to be changed to clarify the text reflecting the provisions of Exec. Order No. 13279, 67 FR 77141 (December 12, 2002).

Section 16.4(c) is proposed to be changed to clarify the text.

Section 16.4(d) is proposed to be moved to Faith-Based or Religious Organizations and Federal Financial Assistance Section 16.3(f) to provide clarity to the text.

Section 16.4(e) is proposed to be included in Section 16.4(b) and to clarify the text by removing extraneous language.

Section 16.4(f) is proposed to be deleted to align the text more closely with the First Amendment of the U.S. Constitution and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

Section 16.4(g) is proposed to be deleted to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

Section 16.4(h) is proposed to be included under Faith-Based or Religious Organizations and Federal Financial Assistance Section 16.3 (d) and (e) to clarify the rights of a faith based or religious organization that receives Federal financial assistance in accordance with the First Amendment and RFRA.

Section 16.5

Effect on State and Local Funds

Section 16.5 is proposed to be moved to Faith-Based or Religious Organizations and Federal Financial Assistance Section 16.3(g) to clarify the text.

Section 16.6

Compliance

Section 16.6 is proposed to be deleted to remove extraneous language that is already included in the Department's authorizing laws, rules, and regulations.

Appendix A and Appendix B

Appendix A is proposed to be changed and Appendix B is proposed to be added to align more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

III. Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Planning and Review

This NPRM has been drafted in accordance with Executive Order 13563 of January 18, 2011, 76 FR 3821, Improving Regulation and Regulatory Review, and Executive Order 12866 of September 30, 1993, 58 FR 51735, Regulatory Planning and Review. Executive Order 13563 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) must determine which of each agency's planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of the Executive Order. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a regulation that may

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

OIRA has determined that this proposed rule is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. This proposed action would impact the costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559 as part of participating in the operation of the following USDA programs:

- National Institute for Food and Agriculture: Community Foods Projects Competitive Grants Program
- Food and Nutrition Service: The Emergency Food Assistance Program (TEFAP)
- Food and Nutrition Service: The Commodity Supplemental Food Program (CSFP)
- Rural Development: Community Facilities
- Rural Development: Business Programs
- Rural Development: Housing

(Please note that the April 4, 2016 final rule included exemptions for USDA's Child Nutrition Programs and International Programs.)

The Department has also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

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

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

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

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

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

76 FR 3821, 3821 (Jan. 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' *Id.* The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Re: Executive Order 13563, ''Improving Regulation and Regulatory Review'', at 1 (Feb. 2, 2011), available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf.*

The Department is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Department selected the approach that it believes maximizes net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

It is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements on those organizations, and imposing only limited costs on beneficiaries. The Department has determined in addition that this proposed action would result in benefits to beneficiaries, described in more detail below.

The Department also has determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559 and further amended by Executive Order 13831, and those determined to be necessary for administering the Department's programs and activities. Specific categories of these costs include:

- The cost to service providers of making referrals for beneficiaries to service providers in the event that they object to the religious character of the provider;
- The cost to service providers of tracking and reporting these referrals to USDA or intermediary agencies; and
- The costs to beneficiaries to use their own means to investigate alternative providers on their own in lieu of the existing referral process.

The effect of the rule would be to eliminate the first two categories of costs, and add the third category.

The Department recognizes a quantifiable benefit of the removal of the notice and referral requirements, which the Department previously estimated, as imposing 7,421 burden hours. 80 FR 47250; 81FR 19383. We have added one program (CSFP) to the list since the previous estimate, and therefore have revised this estimate up to 8,084 burden hours, valued at roughly $58,600. The Department invites comment on any data by which it could assess the actual implementation costs of the notice and referral requirement—including any estimates of staff time spent on compliance with the requirement, in addition to the printing costs for the notices referenced above—and thereby more precisely quantify the benefits of removing these requirements.

Specific information is not available on these costs to roughly 3,500 estimated beneficiaries who seek services but then object to the religious character of the provider, thus requiring them to seek other service providers under the proposal where referrals had previously been made by the provider. We assume for the purposes of this analysis that up 2 hours may be needed for each beneficiary to find alternative services. Valuing that time at the Federal minimum wage rate ($7.25 per hour), we estimate that this reflects roughly $50,000 in total annual cost for beneficiary time. Here again, the Department invites comment on any information that it could use to better quantify these cost increases.

In terms of benefits, the Department recognizes a non-quantifiable benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran.* The Department also recognizes a non-quantifiable benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the federal government. Beneficiaries will also benefit from the increased capacity of faith-based social-service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace once relieved of the concern of excessive governmental entanglement in their affairs.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's interim guidance, issued on April 5, 2017, *https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation* explains that for Fiscal Year 2017 the above requirements only apply to each new ''significant regulatory action that imposes costs.''

This proposed rule is expected to be an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Department has not prepared a regulatory flexibility analysis.

Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132: Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments using the contact information provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 7 CFR Part 16

Administrative practice and procedure, Grant programs.

Accordingly, for the reasons set forth in the preamble, part 16 of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 16—EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

■ 1. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 13279, 67 FR 77141; E.O. 13280, 67 FR 77145; E.O. 13559, 75 FR 71319; E.O. 13831, 83 FR 20715.

■ 2. Amend § 16.1 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 16.1 Purpose and applicability.

* * * * *

(b) The requirements established in this part do not prevent a USDA awarding agency or any State or local government or other intermediary from accommodating religion in a manner consistent with federal law and the Religion Clauses of the First Amendment to the U.S. Constitution.

■ 3. Revise § 16.2 to read as follows:

§ 16.2 Definitions.

As used in this part:

Direct Federal financial assistance, Federal financial assistance provided directly, Direct funding, or *Directly funded* means financial assistance received by an entity selected by the government or intermediary (under this part) to carry out a service (*e.g.,* by contract, grant, loan agreement, or cooperative agreement). References to *Federal financial assistance* will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly.* Except as otherwise provided by USDA regulation, the recipients of sub-grants that receive Federal financial assistance through State-administered programs (*e.g.,* flow-through programs such as the National School Lunch Program authorized under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*) are not considered recipients of *USDA indirect assistance.* These recipients of sub-awards are considered recipients of USDA direct financial assistance.

Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, or proselytization. Any such activities must be offered separately, in time or location, from the programs or services funded under the agency's grant or cooperative agreement, and participation must be voluntary for beneficiaries of the agency grant or cooperative agreement-funded programs and services.

Federal financial assistance does not include a guarantee or insurance, regulated programs, licenses, procurement contracts at market value, or programs that provide direct benefits.

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* refers to situations where the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment in accordance with the First Amendment of the U.S. Constitution.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that accepts USDA direct assistance and distributes that assistance to other organizations that, in turn, provide government-funded services. If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the intermediary must ensure compliance by the recipient of a contract, grant, or agreement with this part and any implementing rules or guidance. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions. *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–75(7)(A).

■ 4. Revise § 16.3 to read as follows:

§ 16.3 Faith-Based Organizations and Federal Financial Assistance.

(a) A faith based or religious organization is eligible, on the same basis as any other organization, and considering a religious accommodation, to access and participate in any USDA assistance programs for which it is otherwise eligible. Neither the USDA awarding agency nor any State or local government or other intermediary receiving funds under any USDA awarding agency program or service shall, in the selection of service providers, discriminate against an organization on the basis of the organization's religious exercise or affiliation. Additionally, decisions about awards of USDA direct assistance or USDA indirect assistance must be free from political interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendix A and B to this part.

(b) A faith based or religious organization that participates in USDA assistance programs will retain its autonomy; right of expression; religious character; authority over its governance; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use USDA direct assistance to support any ineligible purposes, including explicitly religious activities that involve overt religious content such as worship, religious instruction, or proselytization. A faith based or religious organization may:

(1) Use its facilities to provide services and programs funded with financial assistance from USDA awarding agency without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols,

(2) Retain religious terms in its organization's name,

(3) Select its board members and otherwise govern itself on a religious basis, and

(4) Include religious references in its mission statements and other governing documents.

(c) In addition, a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when an organization participates in a USDA assistance program.

(d) A faith-based or religious organization is eligible to access and participate in USDA assistance programs on the same basis as any other organization. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a USDA awarding agency or a State or local government in administering Federal financial assistance from the USDA awarding agency shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-religious organizations.

(1) Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

(2) All organizations that participate in USDA awarding agency programs or services, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USDA awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.

(3) No grant or agreement, document, loan agreement, covenant, memorandum of understanding, policy or regulation that is used by the USDA awarding agency or a State or local government in administering financial assistance from the USDA awarding agency shall disqualify faith-based or religious organizations from participating in the USDA awarding agency's programs or services because such organizations are motivated by or influenced by religious faith.

(e) If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is delegated the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal government, the intermediary must ensure compliance by the subrecipient with the provisions of this part and any implementing regulations or guidance. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

(f)(1) USDA direct financial assistance may be used for the acquisition, construction, or rehabilitation of structures to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and ineligible purposes, USDA direct financial assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during

the term of the grant is subject to government-wide regulations governing real property disposition (see 2 CFR part 400).

(2) Any use of USDA direct financial assistance for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any ineligible purposes by the religious organization in accordance with applicable laws, regulations, and guidance.

(3) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.

(g) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement USDA awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this section apply irrespective of whether such funds are commingled with Federal funds or segregated.

■ 5. Revise § 16.4 to read as follows:

§ 16.4 Responsibilities of participating organizations.

(a) Any organization that receives direct or indirect Federal financial assistance shall not, with respect to services, or, in the case of direct Federal financial assistance, outreach activities funded by such financial assistance, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(b) Organizations that receive USDA direct assistance under any USDA program may not engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, as part of the programs or services funded by USDA direct assistance. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the Department's authority under applicable Federal law to fund activities that can be directly funded by the Government consistent with the Establishment Clause.

(c) Nothing in paragraphs (a) or (b) of this section shall be construed to prevent faith-based organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.,* the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.,* or USDA international school feeding programs from considering religion in their admissions practices or from imposing religious attendance or curricular requirements at their schools.

§§ 16.5 and 16.6 [Removed]

■ 6. Remove §§ 16.5 and 16.6.

■ 7. Add Appendix A and Appendix B to Part 16 to read as follows:

Appendix A to Part 16—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and, subject to the protections and requirements of part 16 and 42 U.S.C. 2000bb *et seq.,* USDA will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in the U.S. Constitution and federal law, including 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by USDA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Appendix B to Part 16—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in the U.S. Constitution and federal law, including 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by USDA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Stephen L. Censky,

Deputy Secretary.

[FR Doc. 2019–28541 Filed 1–16–20; 8:45 am]

BILLING CODE 3410–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1075; Product Identifier 2019–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR42 airplanes and Model ATR72 airplanes. This proposed AD was prompted by reports of interference and chafing between a propeller brake hydraulic pipe and an electrical wire bundle bracket screw installed in the underwing box of the right-hand (RH) engine nacelle. This proposed AD would require a modification of the electrical wiring routing in the engine nacelles, a one-time detailed visual inspection (DVI) of the propeller brake hydraulic pipe and electrical wire bundle bracket screw head in the underwing box of the RH engine nacelle and, depending on findings, accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated

by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1075.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1075; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sharam Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1075; Product Identifier 2019–NM–189–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0278, dated November 12, 2019 (''EASA AD 2019–0278'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, –400, and –500 airplanes and Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes. Model ATR42–400 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by reports of interference and chafing between a propeller brake hydraulic pipe and an electrical wire bundle bracket screw installed in the underwing box of the RH engine nacelle. The FAA is proposing this AD to address hydraulic pipe damage, which could result in hydraulic leakage and a potential fire in a non-fire-resistant area of the RH engine nacelle when the propeller brake is activated or deactivated while the airplane is on the ground. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0278 describes procedures for a modification of the electrical wiring routing in the engine nacelles, followed by a one-time DVI of the propeller brake hydraulic pipe and electrical wire bundle bracket screw head in the underwing box of the RH engine nacelle and, depending on findings, accomplishment of applicable corrective actions. Corrective actions include hydraulic pipe replacement and repair.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0278 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0278 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0278 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0278 that is required for

compliance with EASA AD 2019–0278 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1075 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 62 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$135	$475	$29,450

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
6 work-hours × $85 per hour = $510	$1,075	$1,585

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—GIE Avions de Transport Régional: Docket No. FAA–2019–1075; Product Identifier 2019–NM–189–AD.

(a) Comments Due Date

The FAA must receive comments by March 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the ATR—GIE Avions de Transport Régional airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0278, dated November 12, 2019 (''EASA AD 2019–0278'').

(1) Model ATR42–200, –300, –320, and –500 airplanes.

(2) Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power; and 92, Electronic common installation.

(e) Reason

This AD was prompted by reports of interference and chafing between a propeller brake hydraulic pipe and an electrical wire bundle bracket screw installed in the underwing box of the right-hand (RH) engine nacelle. The FAA is issuing this AD to address hydraulic pipe damage, which could result in hydraulic leakage and a potential fire in a non-fire-resistant area of the RH engine nacelle when the propeller brake is activated or deactivated while the airplane is on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0278.

(h) Exceptions to EASA AD 2019–0278

(1) Where EASA AD 2019–0278 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0278 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0278 specifies

to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) For information about EASA AD 2019–0278, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1075.

(2) For more information about this AD, contact Sharam Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

Issued on January 7, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00446 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1074; Product Identifier 2019–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 airplanes and Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This proposed AD was prompted by a determination that certain main landing gear (MLG) aft pintle pins repaired using a sulphamate nickel plating have a life limit that is less than the certified life limit. This proposed AD would require a one-time records review and a general visual inspection (GVI) of the MLG aft pintle pins to determine if certain repairs were done, and replacement of certain MLG aft pintle pins with serviceable MLG aft pintle pins, as specified in an Agência Nacional de Aviação Civil (ANAC) Brazilian AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact National Civil Aviation Agency, Aeronautical Products Certification Branch (GGCP), Rua Laurent Martins, n°209, Jardim Esplanada, CEP 12242–431—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1074.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1074; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1074; Product Identifier 2019–NM–191–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The ANAC, which is the aviation authority for Brazil, has issued Brazilian AD 2019–11–07, effective November 18, 2019 (''Brazilian AD 2019–11–07'') (also

referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes; and Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –100 SR, –200 STD, –200 LR, and –200 IGW airplanes. Model ERJ 190–100 SR airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD, therefore, does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that certain MLG aft pintle pins repaired using a sulphamate nickel plating have a life limit that is less than the certified life limit. The FAA is proposing this AD to address failure of the affected MLG aft pintle pins before reaching the certified life limit, which could result in collapse of the MLG during takeoff or landing. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

Brazilian AD 2019–11–07 describes procedures for a one-time records review (for documentation of certain repairs) and a GVI of the MLG aft pintle pins to determine if certain repairs were done (by checking for certain markings and part numbers), and replacement of certain MLG aft pintle pins with serviceable MLG aft pintle pins.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in Brazilian AD 2019–11–07 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and the European Union Aviation Safety Agency (EASA) to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, Brazilian AD 2019–11–07 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Brazilian AD 2019–11–07 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in Brazilian AD 2019–11–07 that is required for compliance with Brazilian AD 2019–11–07 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1074 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 659 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	* $	* $170	* $112,030

* The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the replacements specified in this proposed AD.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A.: Docket No. FAA–2019–1074; Product Identifier 2019–NM–191–AD.

(a) Comments Due Date

The FAA must receive comments by March 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Embraer S.A. airplanes identified in paragraphs (c)(1) through (3), of this AD, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) Brazilian AD 2019–11–07, effective November 18, 2019 (''Brazilian AD 2019–11–07'').

(1) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes.

(2) Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes.

(3) Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that certain main landing gear (MLG) aft pintle pins repaired using a sulphamate nickel plating have a life limit that is less than the certified life limit. The FAA is issuing this AD to address failure of the affected MLG aft pintle pins before reaching the certified life limit, which could result in collapse of the MLG during takeoff or landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Brazilian AD 2019–11–07.

(h) Exceptions to Brazilian AD 2019–11–07

(1) Where Brazilian AD 2019–11–07 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative method of compliance (AMOC)'' section of Brazilian AD 2019–11–07 does not apply to this AD.

(3) Where paragraphs (b)(1) through (3) of Brazilian AD 2019–11–07 specify to carry out an inspection in the airplane technical document documentation and a general visual inspection (GVI) on them, this AD requires a one-time records review and a general visual inspection (GVI) of the MLG aft pintle pins to determine if certain repairs were done.

(4) Where paragraphs (b)(1) through (3) of Brazilian AD 2019–11–07 specify to use a ''new serviceable one,'' for this AD, use a serviceable MLG aft pintle pin as defined in Brazilian AD 2019–11–07.

(i) No Requirement for Return of Parts

Although the service information referenced in Brazilian AD 2019–11–07 specifies to return parts to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) For information about Brazilian AD 2019–11–07, contact National Civil Aviation Agency, Aeronautical Products Certification Branch (GGCP), Rua Laurent Martins, n° 209, Jardim Esplanada, CEP 12242–431—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1074.

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

Issued on January 7, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00447 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1073; Product Identifier 2019–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Saab AB, Support and Services Model SAAB 2000 airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1073.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1073; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *Shahram.Daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1073; Product Identifier 2019–NM–186–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0263, dated October 22, 2019 (''EASA AD 2019–0263'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Saab AB, Support and Services Model SAAB 2000 airplanes.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address, among other things, fatigue cracking of principal structural elements (PSEs) and corrosion prevention and control. This unsafe condition, if not addressed, could result in reduced structural integrity of a PSE and lead to loss of control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0263 describes airworthiness limitations for safe life limits, structural limitation items, and fuel airworthiness items, as well as certification maintenance requirements.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2019–0263 described previously, as incorporated by reference. Any differences with EASA AD 2019–0263 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0263 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0263 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2019–0263 that is required for compliance with EASA AD 2019–0263 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1073 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's new process, which uses MCAI ADs as the primary source of information for compliance with corresponding FAA ADs, has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that specify the incorporation of airworthiness limitation documents.

Although the format of the airworthiness limitation ADs using the new process is different than the FAA's existing format for airworthiness limitation ADs, the FAA requirements are the same: Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document.

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions, Intervals, and CDCCLs'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this proposed AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics): Docket No. FAA–2019–1073; Product Identifier 2019–NM–186–AD.

(a) Comments Due Date

The FAA must receive comments by March 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Saab AB, Support and Services (formerly known as Saab AB, Saab Aeronautics) Model SAAB 2000 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address, among other things, fatigue cracking of principal structural elements (PSEs) and corrosion prevention and control. This unsafe condition, if not addressed, could result in reduced structural integrity of a PSE, and lead to loss of control of the airplane

(f) Compliance

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

(g) New Maintenance or Inspection Program Revision

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0263, dated October 22, 2019 (''EASA AD 2019–0263'').

(h) Exceptions to EASA AD 2019–0263

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0263 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2019–0263 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2019–0263 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0263 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0263, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0263 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0263 does not apply to this AD.

(i) New Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0263.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(k) Related Information

(1) For information about EASA AD 2019–0263, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1073.

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

Issued on January 7, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00445 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1072; Product Identifier 2019–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. This proposed AD was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. This proposed AD was also prompted by an investigation of those reports that revealed that the angle of attack (AOA) (also known as angle of airflow) sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. This proposed AD would require a general visual inspection of the AOA sensors for certain AOA sensors, and replacement of affected AOA sensors. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1072.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1072; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; fax: 562–627–5210; email: *Jeffrey.W.Palmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1072; Product Identifier 2019–NM–181–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of

this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA has received reports of nuisance stick shaker activation while the airplane was accelerating to cruise speed at the top of the climb. A review of recorded flight data and weather reports indicated that the cause of the nuisance stick shaker activation was immobilized AOA sensor vanes, which were frozen because the heaters in the AOA sensors vanes were not sufficient to prevent ice build-up in the AOA sensor faceplate and vane. This can be caused by water entering the AOA vane pivot and freezing during takeoff. This condition, if not addressed, could result in inaccurate or unreliable AOA sensor data being transmitted to airplane systems and consequent loss of controllability of the airplane.

This proposed AD is related to AD 2019–24–18, Amendment 39–21007 (84 FR 71778, December 30, 2019) (''AD 2019–24–18''), which applies to certain The Boeing Company Model 727 airplanes, Model 757 airplanes, and Model 767–200, -300, -300F, and -400ER series airplanes. The unsafe condition and requirements are the same for this proposed AD and AD 2019–24–18. Paragraph (c) of AD 2019–24–18 refers to the airplanes identified in Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, except for airplanes added within this revision (variable numbers QB065, QD191, QD192, QD402, QD403, QD407, and QD410). The preamble to AD 2019–24–18 explains that Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, was issued after the NPRM for AD 2019–24–18 was issued and that although Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, adds airplanes to the effectivity, those airplanes are not added to the applicability of AD 2019–24–18.

Furthermore, the FAA, in the preamble to AD 2019–24–18, explained that adding airplanes to the applicability of AD 2019–24–18 would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the comment period, considering additional comments subsequently received, and eventually issuing a final rule. In consideration of the urgency of the unsafe condition identified in AD 2019–24–18, the FAA determined that delay of AD 2019–24–18 would not be appropriate. The FAA explained that the agency might consider further rulemaking on this issue to address the additional airplanes.

The FAA has determined that further rulemaking is necessary, and this proposed AD follows from that determination. This proposed AD would apply to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, variable numbers QB065, QD191, QD192, QD402, QD403, QD407, and QD410.

Related Service Information Under 1 CFR Part 51

This proposed AD would require Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, which the Director of the Federal Register approved for incorporation by reference as of February 3, 2020 (84 FR 71778, December 30, 2019). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require a general visual inspection of the AOA sensors for a certain part number, and replacement of affected AOA sensors.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1072.

Costs of Compliance

The FAA estimates that this proposed AD affects 1 airplane of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$85.
Replacement	Up to 3 work-hours × $85 per hour = Up to $255.	Up to $54,000	Up to $54,255	Up to $54,255.

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2019–1072; Product Identifier 2019–NM–181–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by March 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category, variable numbers QB065, QD191, QD192, QD402, QD403, QD407, and QD410.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. This AD was also prompted by an investigation of those reports that revealed that the angle of attack (AOA) (also known as angle of airflow) sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. The FAA is issuing this AD to address ice buildup in the AOA sensor faceplate and vane, which may immobilize the AOA sensor vanes, and could result in inaccurate or unreliable AOA sensor data being transmitted to airplane systems and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Within 36 months after the effective date of this AD or at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, whichever occurs first, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 727–34A0247, dated January 2, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

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

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; fax: 562–627–5210; email: *Jeffrey.W.Palmer@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740 5600; telephone 562 797 1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on January 3, 2020.

John Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00448 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 205

RIN 0412–AA99

Equal Participation of Faith-Based Organizations in USAID's Programs and Activities: Implementation of Executive Order 13831

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend USAID's regulations to implement Executive Order 13831, ''Establishment of a White House Faith and Opportunity Initiative.'' Among

other changes, this rule proposes to provide clarity regarding the rights and obligations of faith-based organizations that are participating in USAID's programs, and is intended to ensure that the Agency's implements its programs and activities in a manner consistent with the requirements of Federal law, including the First Amendment to the Constitution and the Religious Freedom Restoration Act (RFRA).

DATES: Comments must be received no later than February 18, 2020.

ADDRESSES: Address all comments concerning this notice to Brian Klotz, Deputy Director, Center for Faith and Opportunity Initiatives, USAID, Room 6.07–017, 1300 Pennsylvania Avenue NW, Washington, DC 20523–6601. Submit comments, identified by title of the action and Regulatory Information Number (RIN), by any of the following methods:

1. Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

2. By mail, addressed to USAID, Center for Faith and Opportunity Initiatives, Room 6.07–100, 1300 Pennsylvania Avenue NW, Washington, DC 20523–6601.

FOR FURTHER INFORMATION CONTACT: Kirsten Evans, Telephone: 202–712–5975, or Email: *kevans@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the **ADDRESSES** section above. All submissions must include the title of the action and the RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID in Washington, DC.

All comments will be available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information otherwise protected from disclosure by statute.

USAID will only address substantive comments on the rule. USAID might not consider comments that are insubstantial or outside the scope of the proposed rule.

B. Request for Comments

USAID requests comments on its proposed rule to amend USAID's regulations to implement Executive Order 13831, ''Establishment of a White House Faith and Opportunity Initiative.''

Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order (''E.O.'') 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That E.O. sought to ensure that ''private and charitable groups, including religious ones . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created the White House Office of Faith-Based and Community Initiatives, which had primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed E.O. 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). E.O. 13279 set forth the principles and policy-making criteria to guide Federal Departments and Agencies in formulating and implementing policies with implications for faith-based and other community organizations, to ensure equal protection of the laws for them, to expand opportunities for them, and to strengthen their capacity to meet social needs in America's communities. In addition, E.O. 13279 directed specified heads of Departments and Agencies to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social-service programs and, where appropriate, to implement new policies consistent with, and necessary to further, the fundamental principles and policy-making criteria articulated in the Order. Consistent with E.O. 13279, USAID promulgated regulations, and published its final rule on participation by religious organizations in the Agency's programs on October 20, 2004, codified at Parts 202, 205, and 211 of Title 22 of the Code of Federal Regulations (CFR).

President Obama maintained President Bush's program, but modified it in certain respects. Shortly after taking office, President Obama signed E.O. 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (February 9, 2009). This E.O. changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed E.O. 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). E.O. 13559 made various changes to E.O. 13279, including making minor and substantive textual changes to the fundamental principles and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. The President tasked an interagency working group with developing model regulatory changes to implement E.O. 13279 as amended by E.O. 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social-service providers to maintain their religious identities, and distinguished between direct and indirect assistance.

Following the work of the interagency working group, USAID published a final rule in the **Federal Register** on April 4, 2016 (81 FR 19355), that amended language in Part 205.1 of Title 22 of the CFR to reflect the following changes: (1) Clarifying restricted uses of funding; (2) detailing the application of restrictions to recipients of sub-awards; and, (3) emphasizing that awards must not be based on political interference or on religious affiliation or lack thereof. In a separate rulemaking published in the **Federal Register** on June 29, 2016 (81 FR 42245), USAID further amended language in Part 205.1 of Title 22 of the CFR22 to allow for the possibility of USAID support, where otherwise consistent with law and jurisprudence on the Establishment Clause of the First Amendment of the Constitution, for activities that involved the overseas acquisition, rehabilitation, or construction of structures used for explicitly religious activities.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued E.O. 13798, Presidential Executive Order Promoting

Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). E.O. 13798 states that ''Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.'' Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies titled, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (October 26, 2017) (''Attorney General's Memorandum on Religious Liberty'').

The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious-liberty protections by providing government-funded social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.'' *Id.* at p. 2.

On May 3, 2018, President Trump signed E.O. 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending E.O. 13279 as amended by E.O. 13559, and other related Executive Orders. Among other things, E.O. 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships,'' as established in E.O. 13498, to the ''White House Faith and Opportunity Initiative''; changed the way the Initiative is to operate; directed Federal Departments and Agencies with ''Centers for Faith-Based and Community Initiatives'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered that Departments and Agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' E.O. 13831 also eliminated the alternative-provider requirement and the requirement of notice thereof in E.O. 13559.

Overview of the Proposed Rule

USAID proposes to amend Part 205 of Title 22 of the CFR to implement E.O. 13831, ''Partnerships With Faith-Based and Other Neighborhood Organizations,'' and amend the current regulations to conform more closely with jurisprudence on the First Amendment of the Constitution; relevant Federal statutes, such as the Religious Freedom Restoration Act (RFRA) of 1993; E.O. 13279, as amended by E.O.s 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty.

The Agency proposes to amend its regulations to make clear that a faith-based organization that participates in Agency-funded programs or services shall retain its autonomy, religious character, and independence.

The proposed rule would also clarify that a faith-based organization that receives financial assistance from USAID may use space in its facilities, without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols.

In addition, the proposed rule would clarify that none of the guidance documents USAID uses in administering its financial assistance shall require faith-based organizations to provide assurances or notices when the Agency does not impose similar requirements on secular organizations. The proposed rule would clarify that a faith-based organization that participates in a Federally funded program retains its independence from the U.S. Government and may continue to carry out its mission consistent with religious-freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution.

This rule proposes to require that the Agency's notices or announcements of award opportunities include language to clarify that faith-based organizations are eligible on the same basis as any other organization and subject to the protections and requirements of Federal law.

Explanations for the Proposed Amendments to Part 205 of Title 22 of the CFR

Section 205.1

Grants and Cooperative Agreements

USAID proposes to change Section 205.1(a) to clarify the text by eliminating extraneous language and to state explicitly the applicability of the First Amendment and the RFRA, under which accommodations for faith-based organizations could be available. *See, e.g.,* Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017). The provision also makes clear that neither USAID nor entities that make and administer sub-awards of USAID funds may discriminate for, or against, an organization on the basis of the organization's religious exercise or affiliation. The existing regulation included a similar statement, but referred to ''religious character,'' rather than ''religious exercise,'' and USAID believes the latter term offers additional clarity, as it has a more well-developed meaning in Federal law. In addition, in § 205.1(a) and throughout, the Agency uses the term ''Faith-based organizations,'' rather than ''religious organizations,'' to align its regulations with the terms used in E.O. 13831.

USAID proposes to change § 205.1(c) to align it more closely with the First Amendment and the RFRA by providing more detail about the autonomy that a faith-based organization retains while participating in U.S. Government programming. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

USAID proposes to change § 205.1(f) to clarify the text and align it more closely with the First Amendment and the RFRA by emphasizing that the Agency shall not require notices and assurances of faith-based organizations if it does not also require them of secular organizations, and by clarifying that USAID may not disqualify faith-based organizations from participating in its programs on the basis of, *inter alia,* their religious exercise. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

USAID proposes to change Section 205.1(g) to emphasize alignment with the First Amendment of the Constitution and the RFRA, and to provide greater clarity about the scope of protection in that provision. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

USAID proposes to add § 205.1(l) to align the text more closely with the First Amendment by making clear that these provisions related to non-discrimination toward faith-based organizations should not be construed to advantage or disadvantage historically recognized religions or sects over other religions or sects. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Regulatory Certifications

E.O. 12866 and 13563: Regulatory Planning and Review

USAID has drafted this Notice of Proposed Rule-Making (NPRM) in

accordance with E.O. 13563 of January 18, 2011, 76 FR 3821, Improving Regulation and Regulatory Review, and E.O. 12866 of September 30, 1993, 58 FR 51735, Regulatory Planning and Review. E.O. 13563 directs Federal Departments and Agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, Departments and Agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action likely to result in a regulation that may:

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

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

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

(4) Raise novel legal or policy issues that arise out of legal mandates, the President's priorities, or the principles stated in E.O. 12866.

OMB/OIRA has determined that this proposed rule is a significant, but not an economically significant, regulatory action subject to review by OMB under Section 3(f) of E.O. 12866. Accordingly, OMB has reviewed this proposed rule.

The Agency has also reviewed these regulations under E.O. 13563, which supplements and reaffirms the principles, structures, and definitions that govern regulatory review established in E.O. 12866. To the extent permitted by law, Section 1(b) of E.O. 13563 requires that a Department or Agency:

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

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

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

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

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

Section 1(c) of E.O. 13563 (76 FR 3821, January 18, 2011) also requires a Department or Agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' *Id.* OMB/OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' (Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, OMB/OIRA, Re: E.O. 13563, ''Improving Regulation and Regulatory Review'', at 1 [Feb. 2, 2011], available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf*).

USAID is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Agency selected the approach that maximizes net benefits. In accordance with E.O.s 12866 and 13563, the Agency has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. As the proposed action does not create any additional requirements, the potential costs associated with this regulatory action are negligible. In terms of benefits, USAID recognizes a non-quantifiable benefit to religious liberty that comes from conforming its regulations more closely to First Amendment jurisprudence. The Agency also recognizes a non-quantifiable benefit that comes from increased clarity in the regulatory requirements that apply to organizations that are operating social-service programs funded by the Federal Government. The Agency invites comment on any additional costs and benefits associated with this rulemaking and any data by which it could quantify such costs or benefits.

E.O. 13771: Reducing Regulation and Controlling Regulatory Costs

President Trump issued E.O. 13771, entitled, ''Reducing Regulation and Controlling Regulatory Costs,'' on January 30, 2017 (82 FR 9339, February 3, 2017). Section 2(a) of E.O. 13771 requires a Department or Agency, unless prohibited by law, to identify at least two existing regulations to repeal when it publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, Section 2(c) of E.O. 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations (OMB's interim guidance, issued on April 5, 2017, *https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation* explains that for Fiscal Year 2017 the above requirements only apply to each new ''significant regulatory action that imposes costs''). This proposed rule is expected to be a deregulatory action under E.O. 13771.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Section 601–612 of Title 5 of the United States Code [U.S.C.]), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires a Department or Agency to prepare a regulatory-flexibility analysis of any rule subject to the requirements of notice-and-comment rulemaking under the Administrative Procedure Act (Section 553 of Title 5 of the U.S.C.) or any other statute, unless the Department or Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

USAID has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Agency has not prepared a regulatory-flexibility analysis.

E.O. 12988: Civil Justice Reform

USAID and OMB have reviewed this proposed rule in accordance with E.O. 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision, or which otherwise impede their full implementation. The rule will not have retroactive effect.

E.O. 13175: Consultation and Coordination With Indian Tribal Governments

USAID and OMB have reviewed this rule in accordance with the requirements of E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments.'' E.O. 13175 requires Federal Departments and Agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Agency has assessed the impact of this rule on Indian tribes and determined it does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175.

Executive Order 13132: Federalism

E.O. 13132 directs that, to the extent practicable and permitted by law, a Department or Agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the Department or Agency meets the consultation and funding requirements of Section 6 of the E.O. Because each change proposed by this rule does not have federalism implications as defined in the E.O., does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the E.O., the Agency has concluded that compliance with the requirements of Section 6 of the E.O. is not necessary.

Plain-Language Instructions

USAID makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Agency is proposing a number of changes to this regulation to enhance its clarity and satisfy the Federal Government's plain-language requirements. If any commenter has suggestions for how the Agency could write the regulation more clearly, please provide comments by using the contact information provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995 Section 3501 of Title 44 of the U.S.C. *et seq.*).

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995 (Section 1503(2) of Title 2 of the U.S.C.), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 22 CFR Part 205

Foreign aid, Grant programs, Non-profit organizations.

Accordingly, for the reasons set forth in the preamble, USAID proposes to amend Part 205 of Chapter II of Title 22 of the CFR as follows:

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 22 U.S.C. 2381(a).

■ 2. In § 205.1, revise paragraphs (a), (c), (f), (g), and add paragraph (l) to read as follows:

§ 205.1 Grants and cooperative agreements.

(a) Faith-based organizations are eligible, on the same basis as any other organization and considering any reasonable accommodation, as is consistent with federal law, the Attorney General's Memorandum of October 6, 2018 (Federal Law Protections for Religious Liberty), and the Religion Clauses of the First Amendment to the U.S. Constitution, to participate in any USAID program for which they are otherwise eligible. In the selection of service-providers, neither USAID nor entities that make and administer sub-awards of USAID funds shall discriminate for, or against, an organization on the basis of the organization's religious exercise or affiliation. Notices or announcements of award opportunities shall include language to indicate that faith-based organizations are eligible on the same basis as any other organization and subject to the protections and requirements of federal law. As used in this section, the term ''program'' refers to federally funded USAID grants and cooperative agreements, including sub-grants and sub-agreements. The term also includes grants awarded under contracts. As used in this section, the term ''grantee'' includes a recipient of a grant or a signatory to a cooperative agreement, as well as sub-recipients of USAID assistance under grants, cooperative agreements, and contracts.

* * * * *

(c) A faith-based organization that applies for, or participates in, USAID-funded programs or services (including through a prime award or sub-award) will retain its autonomy, religious character, and independence, and may continue to carry out its mission consistent with religious freedom protections in federal law, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, a faith-based organization that receives financial assistance from USAID may use space in its facilities, without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives financial assistance from USAID retains its authority over its

internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

* * * * *

(f) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation used by USAID shall require faith-based organizations to provide assurances or notices where the Agency does not require them of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that participate in USAID's programs (including through a prime award or sub-award), including faith-based ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements that govern the conduct of USAID-funded activities, including those that prohibit the use of direct financial assistance from USAID to engage in explicitly religious activities. No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation used by USAID shall disqualify faith-based organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services or other assistance, or because of their religious exercise or affiliation.

(g) A religious organization does not forfeit its exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, when the organization receives financial assistance from USAID. An organization that qualifies for such exemption may select its employees on the basis of their acceptance of, and/or adherence to, the religious tenets of the organization.

* * * * *

(l) Nothing in this section shall be construed in such a way as to advantage, or disadvantage, faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

Brian Klotz,

Deputy Director, Center for Faith and Opportunity Initiatives.

[FR Doc. 2019–27164 Filed 1–16–20; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 38

[Docket No. OAG 166; AG Order No. 4596–2019]

RIN 1105–AB58

Equal Participation of Faith-Based Organizations in Department of Justice's Programs and Activities: Implementation of Executive Order 13831

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The rule proposes to amend Department of Justice (''Department'') regulations on equal treatment for faith-based and other neighborhood organizations and to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, clarify the Department's guidance documents for financial assistance in regard to faith-based organizations, and eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of Federal law, including the First Amendment to the Constitution and the Religious Freedom Restoration Act.

DATES: Comments must be received by the Department on or before February 18, 2020.

ADDRESSES: To ensure proper handling of comments, please reference Docket No. OAG 166 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Robert Davis, Acting Director, Office of Communications, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Robert Davis, Acting Director, Office of Communications, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531, 202–307–0703.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on *http://www.regulations.gov.* Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-Based and Community Initiatives, 66 FR 8499

(Jan. 31, 2001). That Executive Order sought to ensure that ''private and charitable community groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives, with primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.'' *Id.*

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (Dec. 16, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Order. Consistent with Executive Order 13279, the Department of Justice promulgated regulations at 28 CFR part 38 (''Part 38''). *See* 69 FR 2832 (Jan. 21, 2004).

President Obama maintained President Bush's program, but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (Nov. 22, 2010). Executive Order 13559 made various changes to Executive Order 13279, including making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the faith-based provider give notice of potential referral to potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, including the Department's Part 38. The revised regulations defined ''indirect federal financial assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary, 28 CFR 38.3(b), and made a number of other changes implementing the amended Executive Order and other changes for clarity and consistency. The rules required not only that faith-based providers give the notice of the right to an alternative provider specified in Executive Order 13559, but also required faith-based providers, but not other providers, to give written notice to beneficiaries and potential beneficiaries of programs funded with direct Federal financial assistance of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activities must be voluntary and that they must be provided separately from the federally funded activity, and that beneficiaries may report violations. *See* 81 FR 19355 (April 4, 2016).

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 9, 2017). Executive Order 13798 states that ''Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government'' and further provides that the executive branch will honor and enforce those protections. It also directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.'' 82 FR at 21675. Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (Oct. 26, 2017) (the ''Attorney General's Memorandum on Religious Liberty'').

The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing government-funded social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.''

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 8, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships,'' as established in Executive Order 13498, to the ''White House Faith and Opportunity Initiative''; changed the way that the Initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Neighborhood Partnerships'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' 83 FR at 20715, 20716. Executive Order 13831 also eliminated the alternative provider referral requirement and requirement of notice thereof established in Executive Order 13559 described above. 83 FR at 20715.

Alternative Provider Referral and Alternative Provider Notice Requirement

Executive Order 13559 imposed notice and referral burdens on faith-based organizations not imposed on secular organizations. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, Fundamental Principles, by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided that if a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider. Section 2(h)(ii) directed that agencies establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary ''receive[ ] written notice of the protections *set forth in this subsection* prior to enrolling in or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. In 2016, the Department of Justice revised its regulations to conform to Executive Order 13559. 28 CFR 38.6(c)(iv), (d).

In revising its regulations, the Department explained in 2015 that the revisions would implement the alternative provider provisions in Executive Order 13559. Executive Order 13831, however, has removed the alternative provider requirements articulated in Executive Order 13559. The Department also explained that the alternative provider provisions would protect religious liberty rights of social service beneficiaries. But the methods of providing such protections were not required by the Constitution or any applicable law. Indeed, the selected methods are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations, with the Attorney General's Memorandum on Religious Liberty, and with the Religious Freedom Restoration Act of 1993 (''RFRA''), 42 U.S.C. 2000bb–2000bb–4.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017) (quoting *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah,* 508 U.S. 520, 533, 542 (1993) (alteration in original)): ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.''' The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.' '' *Id.* (quoting *McDaniel* v. *Paty,* 435 U.S. 618, 628 (1978) (plurality opinion)); *see also Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''[T]he religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); principle 6 of the Attorney General's Memorandum on Religious Liberty, 82 FR at 49669 (''Government may not target religious individuals or entities for special disabilities based on their religion.'').

Applying the alternative provider requirement categorically to all faith-based and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under RFRA. Under RFRA, where the Government substantially burdens an entity's exercise of religion, the Government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). When a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162, 169–71, 174–83 (2007) (''World Vision Opinion''). Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provides services in a manner that violates the organization's religious tenets. *See Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of alternative providers, Part 38 as most recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct Federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, Executive Order 13279, as amended, clearly set forth the underlying requirements of nondiscrimination, voluntariness, and the holding of religious activities separate in time or place from any federally funded activity. Faith-based providers of social services, like other providers of social services, are required to follow the law and the requirements of grants and contracts they receive. *See, e.g.,* 28 CFR 38.7. There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See*

Mitchell, 530 U.S. at 856–57 (O'Connor, J., concurring in judgment) (noting that in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction''). There is thus no need for prophylactic protections that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance[.]'' 75 FR at 71321. Following issuance of the Working Group's report, the 2016 joint final rule amended existing regulations to make that distinction, and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR at 19358. In so doing, the final rule attempted to capture the definition of ''indirect'' aid that the U.S. Supreme Court employed in *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002). *See* 81 FR at 19361–62.

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—that is, an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers. 536 U.S. at 650. The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,* parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. *Id.* at 656–58. In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' *Id.* at 658.

The final rule issued after the Working Group's report included among its criteria for indirect Federal financial assistance a requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance. *See* 81 FR at 19407–19426. In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

Overview of the Proposed Rule

The Department proposes to amend part 38 to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as RFRA, 42 U.S.C. 2000bb *et seq.;* Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend part 38 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social service providers refer beneficiaries objecting to receiving services from them to an alternative provider and the requirement that faith-based organizations provide notices that are not required of secular organizations.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and secular organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive Federal funding. The language will clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution.

Finally, the proposed rule would directly reference the definition of ''religious exercise'' in RFRA, and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

Explanations for the Proposed Amendments to Part 38

Part 38. Partnerships With Faith-Based and Other Neighborhood Organizations

Section 38.1 Purpose

Section 38.1 is proposed to be changed in order to include a reference to Executive Order 13831.

Section 38.2 Applicability and Scope

Section 38.2(a) is proposed to be changed in order to clarify the text by eliminating extraneous language—specifically, the language ''or religious'' when used in ''faith-based or religious organization'' to align with the terminology used in Executive Order 13831.

Section 38.3 Definitions

Section 38.3(b) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align the text more closely with the First Amendment by removing the requirement of an ''adequate secular option'' for each beneficiary as discussed above and otherwise clarifying the test for indirect Federal financial assistance. *See, e.g., Zelman,* 536 U.S. 639; *Trinity Lutheran,* 137 S. Ct. 2012.

Section 38.3(g) is proposed to be added in order to provide a definition of ''religious exercise'' that aligns with the definitions used in RFRA, 42 U.S.C. 2000bb *et seq.,* and with the Religious Land Use and Individualized Persons Act of 2000, 42 U.S.C. 2000cc–5(7)(A). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 38.4 Policy

Section 38.4(a) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align it more closely with RFRA by recognizing both the possibility that a religious accommodation for a service provider may be appropriate or required and by confirming that government may not discriminate for or against an organization, in the selection of service providers, based on an organization's religious exercise. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); World Vision Opinion.

Section 38.5 Responsibilities

Section 38.5(b) is proposed to be changed in order to clarify the text and to align it more closely with the First Amendment and with RFRA by providing more detail about the autonomy that a faith-based organization retains while participating in government programming. *See, e.g.,* Exec. Order No. 13279, 67 FR 77141 (December 16, 2002), *as amended by* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

Section 38.5(c) is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by making clear that an organization receiving indirect financial assistance is not required to make the attendance requirements of its program optional for a beneficiary who has chosen to expend indirect aid on that program. *See, e.g., Zelman,* 536 U.S. 639; principles 4, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

Section 38.5(d) is proposed to be changed in order to clarify the text and align it more closely with the First Amendment and with RFRA by making clear that assurances should not be required of faith-based organizations when they are not required of non-faith-based organizations, by recognizing the possibility of an accommodation for a faith-based organization participating in a Department program, and by prohibiting disqualification of an eligible faith-based organization from such participation because of its religious exercise. *See, e.g., Trinity Lutheran,* 137 S. Ct. 2012; principles 6, 7, and 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

Section 38.5(f) is proposed to be changed in order to include a reference to Executive Order 13831.

Section 38.5(g) is proposed to be changed in order to clarify the text and align it more closely with RFRA by adding language that would not require application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. If an entity has a sincerely held religious belief that it cannot apply for status as a 501(c)(3) tax-exempt entity, it may provide evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under the Department's criteria in 28 CFR 38.5(g)(1)–(4). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 38.5(i) is proposed to be added in order to align the text more closely with the First Amendment by making clear that these provisions relating to nondiscrimination toward faith-based organizations should not be construed to advantage or disadvantage historically recognized religions or sects over other religions or sects. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 38.6 Procedures

Section 38.6 is proposed to be changed to align the text more closely with the First Amendment and with RFRA by eliminating the notice and referral requirements discussed above and replacing them with alternative notices discussed below. *See, e.g., Zelman,* 536 U.S. 639, *Trinity Lutheran,* 137 S. Ct. 2012; principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 16, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 22, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

Appendix A and Appendix B

Appendix A and Appendix B are proposed to be changed to align the text more closely with the First Amendment and with RFRA by deleting the notice and referral requirements that solely burdened faith-based organizations and instead requiring notices of the terms on which faith-based organizations may generally participate in Department funded programs. *See, e.g., Zelman,* 536 U.S. 639, *Trinity Lutheran,* 137 S. Ct. 2012; principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 16, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 22, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

III. Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Planning and Review

This NPRM has been drafted in accordance with Executive Order 13563 of January 18, 2011, 76 FR 3821, Improving Regulation and Regulatory Review, and Executive Order 12866 of September 30, 1993, 58 FR 51735, Regulatory Planning and Review. Executive Order 13563 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Office of Information and Regulatory Affairs (''OIRA'') must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (''OMB'').

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a regulation that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

OIRA has determined that this proposed rule is a significant, but not economically significant, regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this proposed rule.

The Department has also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

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

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

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

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

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. 76 FR 3821, 3821 (Jan. 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' *Id.* The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Re: Executive Order 13563, ''Improving Regulation and Regulatory Review'', at 1 (Feb. 2, 2011), *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf.*

The Department is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Department selected the approach that it believes maximizes net benefits. Based on the analysis that follows, the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563. It is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements for those organizations. The Department has determined in addition that this proposed action would result in benefits to beneficiaries, described in more detail below.

The Department also has determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs and cost savings associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559 and further amended by Executive Order 13831, and those determined to be necessary for administering the Department's programs and activities. For example, the Department recognizes that the removal of the notice and referral requirements could impose some costs on beneficiaries who may now need to investigate alternative providers on their own if they object to the religious character of a potential social service provider. The Department invites comment on any information that it could use to quantify this potential cost.

The Department also notes a quantifiable cost savings of the removal of the notice requirement, which the Department previously estimated as imposing a cost of no more than $200 per faith-based organization per year for the notices. 81 FR 19391. That estimate was based on an estimate that it would take no more than two hours for faith-based organizations to familiarize themselves with the notice and referral requirements and print and duplicate an adequate number of notice and referral forms for potential beneficiaries, at an upper limit of $50/hour for the labor cost to prepare the forms and an upper limit of $100 for the annual cost of materials to print multiple copies of forms. *Id.* The Department is not aware of any changed circumstances that would counsel a change in this estimated cost. Thus, the Department estimates that the proposed rule's elimination of the notice requirement will result in a cost savings of up to $200 per faith-based organization per year.

The Department previously estimated that the cost added by the recordkeeping requirement associated with the referral requirement was so small as to not be measurable. 80 FR 47316, 47322 (Aug. 6, 2015). Moreover, the Department was unable to quantify the cost of the referral requirement. 81 FR 19391. In particular, while it had previously estimated a burden of two hours of labor per referral, 80 FR 47322, in the 2016 final rule, it was unable to determine the number of referrals that will occur in any one year, 81 FR 19391. The Department now has the benefit of experience and is not aware of any instance of the referral requirement actually being invoked. Because it appears that the referral requirement was never invoked, and therefore faith-based organizations did not expend additional labor or material costs to comply with the referral and recordkeeping requirements, the Department does not expect the elimination of the referral and recordkeeping requirements to result in a cost savings.

The Department invites comment on any data by which it could better assess the actual implementation costs of the notice, referral, and recordkeeping

requirements—including any estimates of staff time spent on compliance with the requirements, in addition to the printing costs for the notices referenced above—and thereby accurately quantify the cost savings of removing these requirements.

In terms of benefits, the Department recognizes a non-quantified benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran.* The Department also recognizes a non-quantified benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the Federal Government. Beneficiaries will also benefit from the increased capacity of faith-based social-service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace once relieved of the concern of excessive governmental involvement.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339 (Feb. 3, 2017)). Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's interim guidance, issued on April 5, 2017, *https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation,* explains that for Fiscal Year 2017 the above requirements only apply to each new ''significant regulatory action that imposes costs.'' This proposed rule is expected to be an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Department has not prepared a regulatory flexibility analysis.

Executive Order 12988—Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or that otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to its knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132—Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments using the contact information provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 28 CFR Part 38

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements, Nonprofit organizations.

Accordingly, for the reasons set forth in the preamble, part 38 of chapter I of Title 28 of the Code of Federal

Regulations is proposed to be amended as follows:

PART 38—PARTNERSHIPS WITH FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS

■ 1. The authority citation for part 38 is revised to read as follows:

Authority: 28 U.S.C. 509; 5 U.S.C. 301; E.O. 13279, 67 FR 77141; 18 U.S.C. 4001, 4042, 5040; 21 U.S.C. 871; 25 U.S.C. 3681; Pub. L. 107–273, 116 Stat. 1758; Public Law 109–162, 119 Stat. 2960; 34 U.S.C. 10152, 10154, 10172, 10221, 10382, 10388, 10444, 10446, 10448, 10473, 10614, 10631, 11111, 11182, 20110, 20125; E.O. 13559, 75 FR 71319; E.O. 13831, 83 FR 20715.

■ 2. Remove ''or religious'' every place it appears except in § 38.4(b).

§ 38.1 [Amended]

■ 3. Amend § 38.1 by removing ''13279 and Executive Order 13559'' and adding in its place ''13279, Executive Order 13559, and Executive Order 13831''.

■ 4. Amend § 38.3 by:

■ a. In paragraph (b) introductory text, remove ''provided to an organization''.

■ b. In paragraph (b)(1), add ''and'' after ''religion''.

■ c. Revise paragraph (b)(2).

■ d. Remove paragraph (b)(3).

■ e. Add paragraph (g).

The revision and addition reads as follows:

§ 38.3 Definitions.

* * * * *

(b) * * *

(2) The service provider receives the assistance as a result of an independent choice of the beneficiary, not a choice of the Government.

* * * * *

(g) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

■ 5. Amend § 38.4 by:

■ a. In paragraph (a), add ''and considering any religious accommodations appropriate under the Constitution or other provisions of Federal law, including but not limited to 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment'' after ''other organization''.

■ b. In paragraph (a), remove ''character'' and add in its place ''exercise''.

■ 6. Amend § 38.5 as follows:

■ a. Amend paragraph (b).

■ i. Add ''autonomy; right of expression; religious character; and'' before ''independence''.

■ ii. Remove ''support'' and add in its place ''fund''.

■ iii. Add ''concealing, altering, or'' before ''removing''.

■ iv. Remove ''a religious basis'' and add in its place ''the basis of their acceptance of or adherence to the religious tenets of the organization''.

■ b. In paragraph (c), add ''and may require attendance at all activities that are fundamental to the program'' after ''organization's program''.

■ c. Revise paragraph (d).

■ d. In paragraph (f), remove ''13559,'' and add in its place ''13559 and further amended by Executive Order 13831,''.

■ e. Amend paragraph (g) by:

■ i. In the introductory text, remove ''a religious'' and add in its place ''a faith-based''.

■ ii. In paragraph (g)(3), remove ''or'' after ''applicant;''.

■ iii. In paragraph (g)(4), remove ''affiliate.'' and add in its place ''affiliate; or''.

■ iv. Add paragraph (g)(5).

■ f. Add paragraph (i).

The revisions and additions read as follows:

§ 38.5 Responsibilities.

* * * * *

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that the Department or a State or local government uses in administering financial assistance from the Department shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, including religious ones, that participate in Department programs must carry out all eligible activities in accordance with all program requirements, subject to any religious accommodations appropriate under the Constitution or other provisions of Federal law, including but not limited to 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering financial assistance from the Department shall disqualify faith-based or religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious exercise or affiliation.

* * * * *

(g) * * *

(5) For an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (g)(1) through (g)(4) of this section.

* * * * *

(i) Neither the Department awarding agency nor any State or local government or other pass-through entity receiving funds under any Department program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

■ 7. Amend § 38.6 as follows:

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

■ b. Remove paragraphs (c) and (d).

§ 38.6 Procedures.

* * * * *

(b) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendices A and B, respectively, to this part.

■ 8. Revise Appendix A and Appendix B to Part 38 to read as follows:

Appendix A to Part 38—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, part 38 and 42 U.S.C. 2000bb *et seq.* The Department of Justice will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the

Department of Justice to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by the Department of Justice, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Appendix B to Part 38—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department of Justice, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Dated: December 18, 2019.

William P. Barr,

Attorney General.

[FR Doc. 2019–27777 Filed 1–16–20; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 2

RIN 1291–AA41

Equal Participation of Faith-Based Organizations in the Department of Labor's Programs and Activities: Implementation of Executive Order 13831

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The rule proposes to amend Department of Labor (Department, DOL) regulations to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, clarify the Department's guidance documents for financial assistance in regard to faith-based organizations, and eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of federal law, including the First Amendment to the Constitution and the Religious Freedom Restoration Act.

DATES: Comments must be received by DOL on or before February 18, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Zelden, Director, Centers for Faith & Opportunity Initiatives; telephone: 202–693–6017, email: *Zelden.Mark.A@dol.gov.*

ADDRESSES: To ensure proper handling of comments, please reference Docket No. DOL–2019–0006 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Centers for Faith & Opportunity Initiatives, U.S. Department of Labor, Room S–2228, 200 Constitution Avenue NW, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, the Department cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others), such as Social Security Numbers, birthdates, and medical data. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that ''private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives with primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Order.

In 2004, the Department of Labor issued regulations through notice-and-comment rulemaking implementing Executive Order 13279 at 29 CFR part 2 subpart D (''Part 2 Subpart D''). 69 FR 41882 (July 12, 2004). The regulations applied to all providers that implemented social service programs supported by the Department. The Department subsequently issued guidance detailing the process for recipients of financial assistance to

obtain exemptions from religious nondiscrimination requirements under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb–2000bb–4. *See* Office of the Assistant Secretary for Administration & Management, The Effect of the Religious Freedom Restoration Act on Recipients of DOL Financial Assistance, *https://www.dol.gov/oasam/grants/RFRA-Guidance.htm.*

President Obama maintained President Bush's program, but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). Executive Order 13559 made various changes to Executive Order 13279 which included: Making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the faith-based provider give notice of potential referral to potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect assistance.

These efforts eventually resulted in amendments to agency regulations, including the Department's Part 2 Subpart D. In April 2016, the Department amended its existing regulations through notice-and-comment rulemaking to ensure consistency with Executive Order 13279 as amended by Executive Order 13559. 81 FR 19355, 19391 (April 4, 2016). In July 2016, the Department issued guidance to grantees on the amended rule. *See* Center for Faith-Based & Neighborhood Partnerships, Guidance on Protections for and Obligations of Organizations that Administer Social Service Programs Supported by DOL Financial Assistance, *https://www.dol.gov/cfoi/GuidanceProviderProtections.pdf;* Center for Faith-Based & Neighborhood Partnerships, Frequently Asked Questions on Federal Financial Assistance and Protections for Religious Identity, *https://www.dol.gov/cfoi/FAQsFederalFinancialAssistanceProtectionsForReligiousIdentity.pdf.*

The revised regulations defined ''indirect assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary. 29 CFR 2.31(a). The rules not only required that faith-based providers give the notice of the right to an alternative provider specified in Executive Order 13559, but also required faith-based providers, but not other providers, to give written notice to beneficiaries and potential beneficiaries of programs funded with direct federal financial assistance of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activities must be voluntary and that they must be provided separately from the federally funded activity, and that beneficiaries may report violations. 29 CFR 2.34.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). Executive Order 13798 states that ''[f]ederal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.'' Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (October 26, 2017) (the ''Attorney General's Memorandum on Religious Liberty'').

The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing government-funded social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.''

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships'' as established in Executive Order 13498, to the ''White House Faith and Opportunity Initiative''; changed the way that the Initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Community Initiatives'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' Executive Order 13831 also eliminated the alternative provider referral requirement and requirement of notice thereof in Executive Order 13559 described above.

Alternative Provider Referral and Alternative Provider Notice Requirement

Executive Order 13559 imposed notice and referral burdens on faith-based organizations not imposed on secular organizations. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, entitled ''Fundamental Principles,'' by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: ''If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.'' Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations;

that providers notify agencies of and track referrals; and that each beneficiary ''receives written notice of the protections *set forth in this subsection* prior to enrolling in or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. In 2016, the Department revised its regulations to conform to Executive Order 13559. 29 CFR 2.34(a)(4), 2.35.

In revising its regulations, the Department explained in 2015 that the revisions would implement the alternative provider provisions in Executive Order 13559. Executive Order 13831, however, has removed the alternative provider requirements articulated in Executive Order 13559. The Department also explained that the alternative provider provisions would protect religious liberty rights of social service beneficiaries. But the methods of providing such protections were not required by the Constitution or any applicable law. Indeed, the selected methods are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations, with the Attorney General's Memorandum on Religious Liberty, and with RFRA.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017), a case in which a church operated preschool was denied state grant funds for updating playgrounds: ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' '' (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520, 533 (1993) (alteration in original)). The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.' '' *Id.* (quoting *McDaniel* v. *Paty,* 435 U.S. 618, 628 (1978) (plurality opinion)); *see also Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''The religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); Attorney General's Memorandum on Religious Liberty, principle 6 (''Government may not target religious individuals or entities for special disabilities based on their religion.'').

Applying the alternative provider requirement categorically to all faith-based providers and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise implications under RFRA. Under RFRA, where the government substantially burdens an entity's exercise of religion, the government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). The *World Vision OLC* opinion makes clear that when a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA, and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See* Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act, 31 O.L.C. 162, 169–71, 174–83 (June 29, 2007). Requiring faith-based organizations to comply with certain conditions in receiving social service grants could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. *See Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). When imposing the alternative provider requirement in 2016, the agencies asserted an interest in informing beneficiaries of protections of their religious liberty. 81 FR 19353, 19365. But it is far from clear that the alternative provider requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department has not received information concerning instances in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise. Moreover, even if the government's interest is compelling, it is doubtful that imposing notification and referral requirements on faith-based organizations are the least restrictive means of achieving that interest. The Department often makes publicly available information about grant recipients that provide benefits under its programs, so the Department could supply information to beneficiaries seeking an alternate provider.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of alternative providers, Part 2 Subpart D as most recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers funded with direct federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, Executive Order 13279, as amended, clearly sets forth the underlying requirements of nondiscrimination, voluntariness, and the holding of religious activities separate in time or place from any federally funded activity. Faith-based providers of social services, like other providers of social services, are required to follow the law and the requirements of grants and contracts they receive. *See, e.g.,* 29 CFR 38.25. There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell,* 530 U.S. at 856–57 (O'Connor, J., concurring) (noting that in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of

buildings with the limitation that they only be used for secular educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction.''). There is thus no need for prophylactic protections that create administrative burdens on faith-based providers that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance[.]'' 75 FR 71319, 71321 (2010). Following issuance of the Working Group's report, the 2016 joint final rule amended existing regulations to make that distinction, and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR 19355, 19358 (2016). In so doing, the final rule attempted to capture the definition of ''indirect'' aid that the U.S. Supreme Court employed in *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002). *See* 81 FR 19355, 19361–62 (2016).

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—that is, an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,* parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. *Id.* at 656–58. In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' *Id.* at 658.

The final rule issued after the Working Group's report included among its criteria for indirect federal financial assistance a requirement that beneficiaries have ''at least one adequate secular option'' for use of the federal financial assistance. *See* 81 FR 19355, 19407–19426 (2016). In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

Overview of the Proposed Rule

The Department proposes to amend Part 2 Subpart D to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend Part 2 Subpart D to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social service providers refer beneficiaries objecting to receiving services from them to an alternative provider and the requirement that faith-based organizations provide notices that are not required of secular organizations.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from federal, state, and local governments. This autonomy extends to the particular features and attendance requirements a faith-based organization includes as ''fundamental'' in programs funded through indirect financial assistance.[1] It would further clarify that none of the guidance documents that the Department or any state or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and secular organizations.

This proposed rule would additionally require that the Department's notices and announcements of award opportunities and notices of awards and contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding. The language would clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution.

The Department further proposes to include a requirement that notices or announcements of award opportunities and notices of awards or contracts shall include language similar to those found in appendices to the proposed rule, which serve as notice to potential recipients of federal financial assistance *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007). This change is intended to ensure that faith-based organizations are aware of their legal protections so that they will not fail to participate in government programs because of confusion about what options are available to them.

The Department also proposes to revise the prohibition that organizations

[1] The Department invites comment on how this ''fundamental'' criterion could be further clarified or elaborated in any final rule.

may not ''support or engage in any explicitly religious activity'' as part of a program or service funded with direct federal financial assistance to state instead that organizations may not ''engage in'' such activity. The inclusion of the word ''support'' is vague and overly broad and may encompass protected activity. For example, if a faith-based organization provides addiction counseling that is funded through direct federal financial assistance and provides attendees a map of the location that labels a room as a ''chapel,'' providing that map to program participants could raise claims that the organization is ''supporting'' its explicitly religious activities because a program participant may see that the facility includes a chapel and thereby engage in such religious activity. Prohibiting organizations from ''engaging in'' explicitly religious activity is sufficient to prevent any impermissible uses of direct federal financial assistance.

Finally, the proposed rule would directly reference the definition of ''religious exercise'' in RFRA, and would amend the definition of ''indirect Federal financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

Explanations for the Proposed Amendments in 29 CFR Part 2 Subpart D

Title

The Title of Subpart D is proposed to be changed in order to align the text more closely with Executive Order 13831, which uses the term ''faith-based and community organizations,'' and to clarify that the rule encompasses organizations that may be nondenominational but clearly motivated by faith.

Section 2.31 Definitions

Section 2.31(a)(2)(ii) is proposed to be changed in order clarify the text and eliminate extraneous language.

Section 2.31(a)(2)(iii) is proposed to be deleted to align the text more closely with the First Amendment. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002).

Section 2.31(a) is proposed to be modified in order to align the text more closely with Executive Order 13279, 67 FR 77141 (December 12, 2002).

Section 2.31(h) is proposed to be added to provide a definition of religious exercise that is aligned with the definition used in the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.,* and with the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc–5(7)(A). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 2.32 Equal Participation of Faith-Based Organizations

Section 2.32(a) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align it more closely with RFRA by recognizing that DOL may accommodate religion in a manner consistent with the religion clauses of the First Amendment and by making clear that government may not discriminate for or against an organization based on its religious exercise. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007). Also, the term ''religious'' organizations is replaced with ''faith-based'' organizations to align with the terminology used in Executive Order 13831.

Section 2.32(b) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align it more closely with the First Amendment and with RFRA by providing more detail about the autonomy from government that a faith-based organization retains while participating in government programs. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 2.32(c) is proposed to be changed in order to clarify the text and align it more closely with the First Amendment and with RFRA by recognizing that faith-based providers shall not be required to provide notices or assurances where they are not required of non-faith-based providers and by making clear that an organization may not be disqualified from participating in a DOL program because of its religious exercise or lack thereof. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 6, 7, and 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.

Section 2.33(a) is proposed to be changed to clarify that a faith-based organization that participates in a program funded by indirect financial assistance may require that beneficiaries attend all activities that the organization includes as ''fundamental'' in its programs. For example, a drug rehabilitation and job training program funded by indirect financial assistance need not be modified to eliminate attendance at all associated religious programs fundamental to the program. This change is intended to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 2.33(c) is proposed to be changed in accordance with Executive Order 13831, 83 FR 20715 (May 3, 2018).

Section 2.34 Beneficiary Protections: Written Notice

Section 2.34 is proposed to be removed (and reserved) to align more closely with the First Amendment and with RFRA for the reasons discussed above. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018).

Section 2.35 Beneficiary Protections: Referral Requirements

Section 2.35 is proposed to be removed (and reserved) to align more closely with the First Amendment and with RFRA for the reasons discussed above. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018).

Section 2.37 Effect of DOL Support on Title VII Employment Nondiscrimination Requirements and on Other Existing Statutes

Section 2.37 is proposed to be changed in order to clarify the text by eliminating extraneous language and to align it more closely with RFRA and Title VII case law. *See, e.g., Kennedy* v. *St. Joseph's Ministries, Inc.,* 657 F.3d 189, 194 (4th Cir. 2011); *Hall* v. *Baptist Mem'l Health Care Corp.,* 215 F.3d 618, 624 (6th Cir. 2000); *Killinger* v. *Samford Univ.,* 113 F.3d 196, 200 (11th Cir. 1997); *Little* v. *Wuerl,* 929 F.2d 944, 951 (3d Cir. 1991); principles 6, 10–17, 19 and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007).

Section 2.38 Status of Nonprofit Organizations

Section 2.38(b)(5) is proposed to be added in order to align more closely with RFRA. *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017). For any entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax exempt under section 501(c)(3) of the Internal Revenue Code, the entity may provide information otherwise provided on the Form 1023 such as information about the organization, its purposes, a narrative description of its activities, limitations on disposition of assets of the organization, compensation and other financial arrangements with its officers, directors, trustees, employees, and independent contractors, etc. Other legally binding documents that establish that no part of the net earnings of the organization may lawfully benefit any private shareholder or individual may also be appropriate.

Section 2.39 Political or Religious Affiliation

Section 2.39 is proposed to be changed to include revised language that was inadvertently omitted in publishing the 2016 final rule: ''The last clause of 29 CFR 2.39 in the final regulation will be modified from 'not on the basis of religion or religious belief' to 'not on the basis of the religious affiliation of a recipient organization or lack thereof.' '' 81 FR 19394.

Section 2.40 Nondiscrimination Among Faith-Based Organizations

Section 2.40 is proposed to be added in order to align more closely with the First Amendment by making clear that these provisions relating to nondiscrimination toward faith-based organizations should not be construed to advantage or disadvantage historically recognized religions or sects over other religions or sects. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Appendix A and Appendix B

Appendix A and Appendix B are proposed to be changed to align the text more closely with the First Amendment and with RFRA by deleting the notice and referral requirements that solely burdened faith-based organizations and instead requiring notices of the terms on which faith-based organizations may generally participate in DOL-funded programs. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018). The Department also proposes to revise the prohibition that organizations may not ''support or engage in any explicitly religious activity'' as part of a program or service funded with direct federal financial assistance to state, instead, that organizations may not ''engage in'' such activity. The inclusion of the word ''support'' is vague and overly broad and may encompass protected activity.

III. Regulatory Certifications

Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improved Regulation and Regulatory Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This NPRM has been drafted in accordance with Executive Order 13563 of January 18, 2011, 76 FR 3821, Improving Regulation and Regulatory Review; Executive Order 12866 of September 30, 1993, 58 FR 51735, Regulatory Planning and Review; and Executive Order 13771 of January 30, 2017, 82 FR 9339, Reducing Regulation and Controlling Regulatory Costs. Executive Order 12866 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

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

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

OIRA has determined that this proposed rule is a significant, but not economically significant, regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this proposed rule.

The Department has also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that

their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

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

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

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

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

76 FR 3821, 3821 (January 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' Id. The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Re: Executive Order 13563, ''Improving Regulation and Regulatory Review,'' at 1 (February 2, 2011), available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf.*

The Department is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Department selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563. It is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements on those organizations.

The Department also has determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs and cost savings associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559 and further amended by Executive Order 13831, and those determined to be necessary for administering the Department's programs and activities. For example, the Department recognizes that the removal of the notice and referral requirements could impose some costs on beneficiaries who may now need to investigate alternative providers on their own if they object to the religious character of a potential social service provider. The Department invites comment on any information that it could use to quantify this potential cost. The Department also notes a quantifiable cost savings of the removal of the notice requirements, which the Department previously estimated as imposing a cost of no more than $200 per organization per year for the notices. 81 FR 19395. The Department was previously unable to quantify the cost of the referral requirement. *Id.* The Department invites comment on any data by which it could assess the actual implementation costs of the notice and referral requirements—including the number of affected organizations, any estimates of staff time spent on compliance with the requirements, in addition to the printing costs for the notices referenced above—and thereby accurately quantify the cost savings of removing these requirements in the final rule.

In terms of benefits, the Department recognizes a non-quantified benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran.* The Department also recognizes a non-quantified benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social service programs funded by the federal government. Beneficiaries will also benefit from the increased capacity of faith-based social service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace under these streamlined regulations.

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Department has not prepared a regulatory flexibility analysis.

Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132: Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments using the contact information provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees, Religious discrimination.

Accordingly, for the reasons set forth in the preamble, part 2 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2—GENERAL REGULATIONS

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 13198, 66 FR 8497; E.O. 13279, 67 FR 77141; E.O. 13559, 75 FR 71319; E.O. 13831, 83 FR 20715.

Subpart D—Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

■ 2. Amend § 2.31 by revising paragraph (a) introductory text, (a)(2), and adding paragraph (h) as follows:

§ 2.31 Definitions.

(a) The term *Federal financial assistance* means assistance that non-Federal entities (including State and local governments) receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, direct appropriations, or other direct or indirect assistance, but does not include a tax credit, deduction, or exemption, nor the use by a private participant of assistance obtained through direct benefit programs (such as SNAP, social security, pensions). Federal financial assistance may be *direct* or *indirect.*

* * * * *

(2) The term *indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered indirect when:

(i) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion; and

(ii) The organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

* * * * *

(h) The term *religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A).

■ 3. Revise § 2.32 to read as follows:

§ 2.32 Equal participation of faith-based organizations.

(a) Faith-based organizations must be eligible, on the same basis as any other organization and considering any reasonable accommodation, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL and DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious exercise or affiliation, although this requirement does not preclude DOL, DOL social service providers, or State or local governments administering DOL support from accommodating religion in a manner consistent with the Religion Clauses of the First Amendment to the Constitution. In addition, because this rule does not affect existing constitutional requirements, DOL, DOL social service providers (insofar as they may otherwise be subject to any constitutional requirements), and State and local governments administering DOL support must continue to comply with otherwise applicable constitutional principles, including, among others, those articulated in the Establishment, Free Speech, and Free Exercise Clauses of the First Amendment to the Constitution. Notices and announcements of award opportunities and notices of award and contracts shall include language substantially similar to that in Appendices A and B, respectively, to this part.

(b) A faith-based organization that is a DOL social service provider retains its autonomy; right of expression; religious character; and independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. Among other things, such a faith-based organization must be permitted to:

(1) Use its facilities to provide DOL-supported social services without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols from those facilities; and

(2) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on the basis of their acceptance of or adherence to the religious requirements or standards of the organization, and including

religious references in its mission statements and other governing documents.

(c) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, including religious ones that are DOL social service providers, must carry out DOL-supported activities, subject to any required or appropriate religious accommodation, in accordance with all program requirements, including those prohibiting the use of direct DOL support for explicitly religious activities (including worship, religious instruction, or proselytization). A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify organizations from receiving DOL support or participating in DOL programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious exercise or affiliation, or lack thereof.

§ 2.33 [Amended]

■ 4. Amend § 2.33 as follows:

■ a. In paragraph (a), by adding ''and may require attendance at all activities that are fundamental to the program'' after ''organization's program''.

■ b. In paragraph (c), by adding ''and further amended by Executive Order 13831'' after ''13559''.

§§ 2.34 and 2.35 [Removed and Reserved]

■ 5. Remove and reserve §§ 2.34 and 2.35.

■ 6. Revise § 2.37 to read as follows:

§ 2.37 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives direct or indirect DOL support. An organization qualifying for such exemption may make its employment decisions on the basis of their acceptance of or adherence to the religious requirements or standards of the organization, but not on the basis of any other protected characteristic. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. Accordingly, to determine the scope of any applicable requirements, including in light of any additional constitutional or statutory protections for employment decisions that may apply, recipients and potential recipients should consult with the appropriate DOL program official or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N4123, Washington, DC 20210, (202) 693–6500. Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

■ 7. In § 2.38, revise paragraphs (b)(3) and (4) and add paragraph (b)(5) to read as follows:

§ 2.38 Status of nonprofit organizations.

* * * * *

(b) * * *

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;

(4) Any item described in paragraphs (b)(1) through (b)(3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization; or

(5) For an entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (b)(1) through (b)(4) of this section.

§ 2.39 [Amended]

■ 8. Amend § 2.39 by removing ''not on the basis of religion or religious belief or lack thereof'' and add in its place ''not on the basis of the religious affiliation of a recipient organization or lack thereof.''

■ 9. Add a new § 2.40 to read as follows:

§ 2.40 Nondiscrimination among faith-based organizations.

Neither DOL nor any State or local government or other entity receiving funds under any DOL program or service shall construe the provisions of this part in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

■ 10. Revise Appendix A and Appendix B to Part 2 to read as follows:

Appendix A to Part 2—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, part 2 subpart D and 42 U.S.C. 2000bb *et seq.* DOL will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DOL to engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment to the Constitution and any other applicable requirements. Such an organization also may not, in providing services funded by DOL, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Appendix B to Part 2—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DOL to engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by DOL, discriminate against a program beneficiary or prospective program beneficiary on the basis

of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Dated: December 9, 2019.

Eugene Scalia,

Secretary, U.S. Department of Labor.

[FR Doc. 2019–26862 Filed 1–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 50, 61 and 62

RIN 2900–AQ75

Equal Participation of Faith-Based Organizations in Veterans Affairs Programs: Implementation of Executive Order 13831

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The rule proposes to amend United States Department of Veterans Affairs (Department) general regulations to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, clarify the Department's rules for financial assistance in regard to faith-based organizations, and eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of federal law, including the First Amendment to the Constitution and the Religious Freedom Restoration Act.

DATES: Comments must be received by VA on or before February 18, 2020.

ADDRESSES: To ensure proper handling of comments, please reference RIN 2900–AQ75—EQUAL PARTICIPATION OF FAITH-BASED ORGANIZATIONS IN VETERANS AFFAIRS PROGRAMS: IMPLEMENTATION OF EXECUTIVE ORDER 13831 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026.

FOR FURTHER INFORMATION CONTACT: Conrad Washington, Deputy Director, Center for Faith and Opportunities Initiatives (00FB), Office of the Secretary, Department of Veterans Affairs, 810 Vermont Avenue NW; (VA CFOI), Washington, DC 20420, (202) 461–7689. (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on *http://www.regulations.gov.* Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that ''private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives with primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Order.

Consistent with Executive Order 13279, the Department promulgated regulations at 38 CFR parts 50, 61, and 62 (''Parts 50, 61, and 62''). In particular, on September 26, 2003, VA codified Part 61, governing the Homeless Provider Grant and Per Diem

Program, as a final rule. Section 61.64 ensures that VA programs, under this part, are open to all qualified organizations, regardless of their religious character and establishes instructions for the proper uses of direct Federal financial assistance. VA's regulations at Parts 50 and 62 are discussed below.

President Obama maintained President Bush's program, but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 10, 2010, VA published a final rule promulgating 38 CFR part 62, regulations implementing 38 U.S.C. 2044 by establishing a Supportive Services for Veteran Families (SSVF) program. 75 FR 68979. Through this program, VA offers grants identified in the regulations, that provide supportive services to very low-income veterans and families who are at risk for becoming homeless or who, in some cases, have recently become homeless. 38 CFR 62.62 provides that religious or faith-based organizations are eligible for supportive services grant funds on the same basis as any other organization.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). Executive Order 13559 made various changes to Executive Order 13279, which included: Making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the faith-based provider give notice of potential referral to potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, including the Department's Part 50. This revised regulation defined ''indirect assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary. 38 CFR 50.1(b).

In particular, on April 4, 2016, VA published a final rule amending 38 CFR 61.64 and 62.62 and promulgating 38 CFR part 50. 81 FR 19355. The regulations were amended to replace the term ''inherently religious activities'' with the term ''explicitly religious activities'' and defined the latter term in 38 CFR 50.1(a) as including activities that involve overt religious content such as worship, religious instruction, or proselytization. VA also added regulatory language to distinguish between direct and indirect Federal financial assistance; clarify the responsibilities of intermediaries; require certain notifications for beneficiaries when obtaining services from providers with religious affiliation; and provide guidance that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference. The rules required that faith-based providers, but not other providers, give notice of the right to an alternative provider specified in Executive Order 13559, along with various other rights, including nondiscrimination based on religion, that participation in any religious activities must be voluntary, that explicitly religious activities be provided separately from the federally funded activity, and that beneficiaries may report violations. The rules in Part 50 applied to social service programs as defined in Executive Order 13279. See 38 CFR 50.1(a). Based on this definition, VA determined that these rules only applied to the VA grant programs for homeless veterans established in 38 CFR 61 and 62.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). Executive Order 13798 states that ''[f]ederal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.'' Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (October 26, 2017) (the ''Attorney General's Memorandum on Religious Liberty'').

The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing government-funded social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.''

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships,'' as established in Executive Order 13498, to the ''White House Faith and Opportunity Initiative''; changed the way that initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Neighborhood Partnerships'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' Executive Order 13831 also eliminated the alternative provider referral requirement and requirement of notice thereof in Executive Order 13559 described above.

Alternative Provider Referral and Alternative Provider Notice Requirement

Executive order 13559 imposed notice and referral burdens on faith-based organizations not imposed on secular organizations. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, entitled ''Fundamental Principles,'' by, in pertinent part, adding a new subsection

(h) to section 2. As amended, section 2(h)(i) provided: ''If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.'' Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary ''receives written notice of the protections *set forth in this subsection* prior to enrolling in or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. In 2016, the Department of Veterans Affairs revised its regulations to conform to Executive Order 13559. 38 CFR 50.2–50.3.

In revising its regulations, the Department explained in 2015 that the revisions would implement the alternative provider provisions in Executive Order 13559. Executive Order 13831, however, has removed the alternative provider requirements articulated in Executive Order 13559. The Department also explained that the alternative provider provisions would protect religious liberty rights of social service beneficiaries. But, the methods of providing such protections were not required by the Constitution or any applicable law. Indeed, the selected methods are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations, with the Attorney General's Memorandum on Religious Liberty, and with the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 20000bb–20000bb–4.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017) (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520, 533 (1993) (alteration in original)): ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' '' The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.' '' *Id.* (quoting *McDaniel* v. *Paty,* 435 U.S. 618, 628 (1978) (plurality opinion); see also *Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''The religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); Attorney General's Memorandum on Religious Liberty, principle 6 (''Government may not target religious individuals or entities for special disabilities based on their religion.''). Applying the alternative provider requirement categorically to all faith-based and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under RFRA. Under RFRA, where the government substantially burdens an entity's exercise of religion, the government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). The World Vision OLC opinion makes clear that when a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. See Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act, 31 O.L.C. 162, 169–71, 174–83 (June 29, 2007). Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. *See Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise. Moreover, even if the government's interest is compelling, it is doubtful that imposing notification and referral requirements on faith-based organizations is the least restrictive means of achieving that interest. VA often makes publicly available information about grant recipients that provide benefits under its programs, so VA could supply information to beneficiaries seeking an alternate provider.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of alternative providers, Part 50 as recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, Executive Order 13279, as amended, clearly set forth the underlying requirements of nondiscrimination, voluntariness, and the holding of religious activities separate in time or place from any federally funded activity. Faith-based providers of social services, like other providers of social services, are required to sign assurances that they will follow the law and the requirements of grants and contracts they receive. {*See, e.g.,* 28 CFR 38.7}. There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell,* 530 U.S. 856–57

(O'Connor, J. concurring) (noting that in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction.''). There is thus no need for prophylactic protections that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance[.]'' 75 FR 71319, 71321 (2010). Following issuance of the Working Group's report, the 2016 joint final rule amended existing regulations to make that distinction, and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR 19355, 19358 (2016). In so doing, the final rule attempted to capture the definition of ''indirect'' aid that the U.S. Supreme Court employed in *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002). *See* 81 FR 19355, 19361–62 (2016).

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—that is, an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,* parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. *Id.* at 656–58. In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' *Id.* at 658.

The final rule issued after the Working Group's report included among its criteria for indirect Federal financial assistance a requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance. *See* 81 FR 19355, 19407–19426 (2016). In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

Overview of the Proposed Rule

The Department proposes to amend Parts 50, 61, and 62 to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831, and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend Part 50 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social service providers refer beneficiaries objecting to receiving services from them to an alternative provider and the requirement that faith-based organizations provide notices that are not required of secular organizations.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and secular organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding. The language will clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution.

Finally, the proposed rule would directly reference to the definition of ''religious exercise'' in RFRA, and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

Explanations for the Proposed Amendments to Parts 50, 61, and 62

Section 50.1

Definitions

Proposed section 50.1 would define the terms used in Part 50. Provisions governing the application of these terms such as what is in current section 50.1(a) would be addressed in proposed section 50.2. In proposed section 50.1(a), VA would revise the definition of ''Direct Federal financial assistance'' currently defined in 38 CFR 50.1(b)(1) in order to provide clarity.

In proposed section 50.1(b), current section 50.1(b)(2), defining indirect federal financial assistance, is to be changed and current section 50.1(b)(2) would be removed in order to clarify the text by eliminating extraneous language

and to align the text more closely with the First Amendment as described above. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

Current section 50.1(c), on the recipients of subgrants, is proposed to be deleted and replaced with a provision clarifying that the coverage of ''federal financial assistance'' does not include tax credit, deduction, exemption, guaranty contracts, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

Current section 50.1(d), which defines ''intermediary'', is proposed to be changed in order to provide clarity using the term ''pass-through entity'' instead and to align the text more closely with other federal regulations. *See, e.g.,* 28 CFR 38.3(c)(1).

Current section 50.1(e), which governs selection by intermediaries of service providers to receive direct federal financial assistance, is proposed to be revised, moved and renumbered as section 50.2(k). Section 50.1(e) is proposed to be replaced with a provision clarifying that ''programs and services'' have the same meaning as ''social services program'' defined in Executive Order 13279. This is consistent with how that term is defined in current section 50.1(a).

The information on intermediaries in current section 50.1(f) is proposed to be addressed in section 50.2. Proposed 50.1(f) would provide a definition of the term ''recipient.''

The information in current section 50.1(f) is proposed to be moved to section 50.2(d) and changed in order to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 4, 10–15, and 20 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Proposed new section 50.1(g) would define religious exercise as having the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A) which states: ''In general. The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'' This would clarify that the agency uses the term ''religious exercise'' in these regulations consistent with the definition that applies in RFRA, see *Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 696 (2014).

Section 50.2

Faith-Based Organizations and Federal Financial Assistance

As explained above, current section 50.2, which covers beneficiary protections and notice to beneficiaries of those protections, is proposed to be removed.

A new section 50.2(a) is proposed to be added to align text currently in section 50.1 more closely with the First Amendment, RFRA, and other VA regulations. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion); 38 CFR 61.64(a), and 38 CFR 62.62(a). This new section 50.2(a) would affirm that faith-based or religious organizations are eligible on the same basis as any other organization to participate in VA awarding agency programs and services. It would also make clear that VA and State and local governments and pass-through entities receiving funds under any VA awarding agency program or service may not, in the selection of service providers, discriminate for or against an organization's religious exercise or affiliation. Finally, it would require notices or announcements of award opportunities and notices of award or contracts to include language informing faith-based organizations of some of the protections and requirements under this regulation.

Section 50.2(b) is proposed to be added to align text currently in section 50.1(a) more closely with the First Amendment, RFRA, and other federal regulations. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); 28 CFR 38.2(c), 38.5(a); 38 CFR 61.64(b)(1) and (c), 38 CFR 62.62(b)(1) and (c).

Section 50.2(c) is proposed to be added in order to clarify the text currently in section 50.1 and to align it more closely with the First Amendment, RFRA, and other federal regulations by providing more detail about the autonomy from government that a faith-based organization retains while participating in government programming. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); 28 CFR part 38.5(b); 38 CFR 61.64(d), and 38 CFR 62.62(d).

As noted above, current section 50.1(f) is proposed to be moved to section 50.2(d) and revised in order to align more closely with the First Amendment, RFRA, and other federal regulations. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(c). In particular, section 50.2(d) would permit faith-based organizations receiving indirect Federal financial assistance as a result of the independent choice of a beneficiary to require the beneficiary's attendance at all activities that are fundamental to the program.

Section 50.2(e) is proposed to be added in order to align these regulations more closely with the First Amendment and with RFRA by making clear that faith-based organizations shall not be required to provide assurances when non-faith based organizations are not, shall be treated equally to non-faith based organizations, and may be eligible for or entitled to an accommodation under federal law while participating in the program. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017)); principles 6, 7, and 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 50.2(f) is proposed to clarify that religious organizations retain their exemption from the Federal prohibition on employment discrimination based on religion while participating in VA programs and in order to align more closely with other federal regulations. *See, e.g.,* 28 CFR 38.5(e).

Section 50.2(g) is proposed to clarify that if some VA grant programs require an organization be a nonprofit

organization to be eligible for funding, the funding announcements and grant application solicitations must specify that nonprofit status is required and the statutory authority for requiring such status and describe the documentation by which a non-profit may prove its status as such. In addition, this section would provide an accommodation for certain organizations that maintain sincerely held religious beliefs against application for tax exempt status under § 501(c)(3) of the Internal Revenue Code. The Department proposes to recognize that organizations with sincerely-held religious beliefs that cannot apply for status as a 501(c)(3) tax-exempt entity may provide evidence sufficient to establish that the organizations would otherwise qualify as a nonprofit organization. This provision would be added in order to align more closely with RFRA and with other federal regulations. *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(g).

Section 50.2(h) is proposed to be added in order to allow, but not require, the commingling of a recipient's own funds with VA funds, but would require that all commingled funds be subject to the requirements of Part 50. This is consistent with the current VA regulations at 38 CFR 61.64(f) and 38 CFR 62.62(f).

Section 50.2(i) is proposed to be added in order to include and clarify the requirements in section 50.4 of the current regulation and would align the text more closely with other federal regulations. *See, e.g.,* 28 CFR 38.4(b).

Section 50.2(j) is proposed to be added in order to ensure that VA and State or local governments or pass-through entities receiving funds under any VA awarding agency program or service do not construe these regulations to advantage or disadvantage historic or well-established religions or sects in comparison with other religions or sects in accordance with the First Amendment. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 50.2(k) is proposed to be added in order to clarify the rights and responsibilities of pass-through entities. This would revise and expand on the current VA regulation at 38 CFR 50.1(e) in order to provide more clarity regarding these entities' rights and responsibilities.

Section 50.3

Beneficiary Protections; Referral Requirements

As discussed above current section 50.3 is proposed to be deleted to align more closely with the First Amendment and with RFRA. *See, e.g., See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

Section 50.4

Political or Religious Affiliation

Section 50.4 is proposed to be renumbered and clarified at Section 50.2(i).

Appendix A and Appendix B

A new Appendix A and Appendix B are proposed to be added in order to align more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6, 7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018). Language substantially similar to Appendix A would be added to notices and announcements of award opportunities. Language substantially similar to Appendix B would be added to notices of award or contacts.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

Subpart F—Awards, Monitoring, and Enforcement of Agreements

Section 61.64

Faith-Based Organizations

Section 61.64 is proposed to be revised to replace ''religious organizations'' with ''faith-based organizations'' including in the title of the section. These changes are intended to be non-substantive and are consistent with those proposed to be made in Parts 50 and 62. They are consistent with the terminology used in the relevant Executive Orders.

In addition, section 61.64(b)(2) which defines ''indirect financial assistance'' and ''direct Federal financial assistance'' for purposes of the VA Homeless Providers grant and per diem program is proposed to be changed in order to clarify the text by eliminating extraneous language and to align the text more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

Section 62.62

Faith-Based Organizations

Section 62.62 is proposed to be revised to replace ''religious organizations'' with ''faith-based organizations'' including in the title of the section. These changes are intended to be non-substantive and are consistent with those proposed to be made in Parts 50 and 61 and with the terminology in the relevant Executive Orders. In addition, non-substantive changes are proposed in section 62.62(d), (e), (f), to remedy errors in the current rule.

Finally, section 62.62(b)(2), which defines ''indirect financial assistance'' and ''direct Federal financial assistance'' for purposes of the Supportive Services for Veteran Families Program, is proposed to be changed in order to clarify the text by eliminating extraneous language and to align the text more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

III. Regulatory Certifications

Executive Order 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively

values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The Department is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Department selected the approaches that it believes maximizes net benefits. Based on the analysis that follows, the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs and cost savings associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559 and further amended by Executive Order 13831, and those determined to be necessary for administering the Department's programs and activities. For example, the Department recognizes that the removal of the notice and referral requirements could impose some costs on beneficiaries who may now need to investigate alternative providers on their own if they object to the religious character of a potential social service provider. The Department invites comment on any information that it could use to quantify this potential cost. The Department also notes a potential quantifiable cost savings associated with the removal of the notice and referral requirements. The Department invites comment on any data by which it could assess the actual implementation costs of the notice and referral requirement—including any estimates of staff time spent on compliance with the requirement, in addition to the printing costs for the notices referenced above—and thereby accurately quantify the cost savings of removing these requirements.

In terms of benefits, the Department recognizes a non-quantified benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran.* The Department also recognizes a non-quantified benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the federal government. Beneficiaries will also benefit from the increased capacity of faith-based social-service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace once relieved of the concern of excessive governmental involvement.

This proposed rule is expected to be an E.O. 13771 deregulatory action.

The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Although small entities participating in VA's Grant and Per Diem and Supportive Services for Veterans Families programs would be affected by this proposed rule, any economic impact would be minimal. Therefore, VA is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132: Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments using the contact information provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens

imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi). This proposed rule includes provisions constituting the removal and discontinuance of an existing and approved Office of Management and Budget (OMB) control number. OMB control number 2900–0828, titled Equal Protection of the Laws for Faith-Based and Community, is proposed to be discontinued.

Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for its review. If OMB does not approve the discontinuation of the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the discontinuation of the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, 727 17th St. NW, Washington, DC 20503. Comments should indicate that they are submitted in response to ''RIN 2900–AP75—Equal Protection of the Laws for Faith-Based and Community Organizations.''

OMB may file comment on the discontinuance of the collection of information contained in this proposed rule within 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 60 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

The Department considers comments by the public on proposed amendments to collections of information in—

- Evaluating whether the proposed or amended collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed or amended collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be amended or collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collection of information being discontinued is described immediately following this paragraph, under its title.

Title: Equal Protection of the Laws for Faith-Based and Community Organizations.

- *Summary of collection of information:* The new collection of information in proposed 38 CFR 50.2 would require faith-based or religious organizations that receive VA financial assistance in providing social services to beneficiaries to provide to beneficiaries (or prospective beneficiaries) written notice informing them of certain protections.
- *Description of need for information and proposed use of information:* The collection(s) of information is necessary to (1) Allow beneficiaries to obtain services from non faith-based organizations; (2) Allow beneficiaries to report violation of VA procedures regarding faith-based organizations.
- *Description of likely respondents:* Veterans and family members.
- *Estimated number of respondents:* 190,700.
- *Estimated frequency of responses:* We estimate that 0.1% of beneficiaries would request alternative placements: 1,907 beneficiaries.
- *Estimated average burden per response:* 2 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 64 hours.

VA form	Number of respondents	×	Number of responses	×	Number of minutes	÷	Number of hours
Written Notices for Beneficiary Rights	190,700		1,907		2	by 60 =	64

In VA's 2017 Information Collection Request package, we estimated that the annual burden would be 64 hours. To determine the estimated annual burden costs savings to respondents as a result of discontinuing the existing collection of information, VA used general wage data from the May 2017 Bureau of Labor Statistics (BLS) website, *https://www.bls.gov/oes/current/oes_nat.htm,* VA used the BLS wage code of ''00–0000 All Occupations, which has a mean hourly wage/salary workers of $24.98. VA estimates the total annual burden costs savings to respondents to be $1,598.72 ($24.98 per hour * 64 burden hours).

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects

38 CFR Part 50

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—housing and community development, Grant programs—Veterans, Health care, Homeless, Housing, Indians—lands, Individuals with disabilities, Low and moderate income housing, Manpower

training programs, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on September 20, 2019, for publication.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

Accordingly, for the reasons set forth in the preamble, the Secretary proposes to amend parts 50, 61, and 62 of title 38 of the Code of Federal Regulations, respectively, as follows:

PART 50—RELIGIOUS AND COMMUNITY ORGANIZATIONS: PROVIDING BENEFICIARY PROTECTIONS TO POLITICAL OR RELIGIOUS AFFILIATION

■ 1. Part 50 is revised to read as follows:

PART 50—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.
50.1 Definitions.
50.2 Faith-based organizations and Federal financial assistance.
Appendix A to Part 50—Notice or Announcement of Award Opportunities.
Appendix B to Part 50—Notice of Award or Contract.

Authority: 38 U.S.C. 501 and as noted in specific sections.

§ 50.1 Definitions.

(a) *Direct Federal financial assistance, Federal financial assistance provided directly, direct funding, or directly funded* means financial assistance received by an entity selected by the government or pass-through entity (under this part) to carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''Federal financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' or ''Federal financial assistance provided indirectly.''

(b) *Indirect Federal financial assistance or Federal financial assistance provided indirectly* means financial assistance received by a service provider when the service provider is paid for services by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider. Federal financial assistance provided to an organization is considered ''indirect'' within the meaning of the Establishment Clause of the First Amendment to the U.S. Constitution when—

(1) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government funded payment is neutral toward religion; and

(2) The organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

(c) *Federal financial assistance* does not include a tax credit, deduction, exemption, guaranty contracts, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

(d) *Pass-through entity* means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government-funded social services.

(e) *Programs or services* has the same definition as ''social service program'' in Executive Order 13279.

(f) *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients, but does include pass-through entities.

(g) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

§ 50.2 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization and considering any permissible accommodation, to participate in any VA awarding agency program or service. Neither the VA awarding agency nor any State or local government or other pass-through entity receiving funds under any VA awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious exercise or affiliation. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendix A and B, respectively, to this part.

(b) Organizations that receive direct financial assistance from a VA awarding agency may not engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct financial assistance from the VA awarding agency, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the VA awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the VA's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based organization that participates in programs or services funded by a VA awarding agency will retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization that receives direct Federal financial assistance may use space in its facilities to provide programs or services funded with financial assistance from the VA awarding agency without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance from a VA awarding agency does not lose the protections of law. Such a faith-based organization retains its authority over its internal governance, and it may retain religious terms in its name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its mission statements and other governing documents.

Note 1 to paragraph (c): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing federal law protections for religious liberty).

(d) An organization that receives direct or indirect Federal financial assistance shall not, with respect to services, or, in the case of direct Federal financial assistance, outreach activities funded by such financial assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization receiving indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(e) A faith-based organization is not rendered ineligible by its religious exercise or affiliation to access and participate in Department programs. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a VA awarding agency or a State or local government in administering Federal financial assistance from any VA awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that participate in VA awarding agency programs or services, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate religious accommodation, and other applicable requirements governing the conduct of activities funded by any VA awarding agency, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the VA awarding agency or a State or local government in administering financial assistance from the VA awarding agency shall disqualify faith-based organizations from participating in the VA awarding agency's programs or services because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious exercise or affiliation.

(f) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization receives direct or indirect Federal financial assistance from a VA awarding agency. An organization qualifying for such exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization. Some VA awarding agency programs, however, contain independent statutory provision affecting a recipient's ability to discriminate in employment. Recipients should consult with the appropriate VA awarding agency program office if they have questions about the scope of any applicable requirement, including in light of any additional constitutional or statutory protections for employment decisions that may apply.

(g) In general, VA awarding agencies do not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under VA awarding agency programs. Some grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate VA awarding agency program office to determine the scope of any applicable requirements. In VA awarding agency programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;

(4) Any item described in paragraphs (g)(1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the state or parent organization that the applicant is a local nonprofit affiliate; or

(5) For an entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (g)(2) through (g)(4) of this section.

(h) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement VA awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provision of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this part apply irrespective of whether such funds are commingled with Federal funds or segregated.

(i) Decisions about awards of Federal financial assistance must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of a recipient organization, and must be free from political interference or even the appearance of such interference.

(j) Neither the VA awarding agency nor any State or local government or other pass-through entity receiving funds under any VA awarding agency program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(k) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance

with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

Appendix A to Part 50—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and, subject to the protections and requirements of part 50 and 42 U.S.C. 2000bb *et seq.,* the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Appendix B to Part 50—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise clauses of the Constitution, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 2. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2013, 2061, 2064.

■ 3. Revise § 61.64 to read as follows:

§ 61.64 Faith-Based Organizations.

(a) Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Explicitly religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, ''Indirect financial assistance'' means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a private beneficiary. ''Direct Federal financial assistance'' means Federal financial assistance received by an entity selected by the government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this paragraph.

(c) Organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's explicitly religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A faith-based organization that participates in VA programs under this part will retain its independence from Federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. In addition, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the state or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

■ 4. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 5. Revise § 62.62 to read as follows:

§ 62.62 Faith-Based Organizations

(a) Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the Supportive Services for Veteran Families Program under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Explicitly religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, ''Indirect financial assistance'' means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a private beneficiary. ''Direct Federal financial assistance'' means Federal financial assistance received by an entity selected by the government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this paragraph.

(c) Organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA under this part, and participation in any of the organization's explicitly religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA under this part.

(d) A faith-based organization that participates in the Supportive Services for Veteran Families Program under this part will retain its independence from Federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. In addition, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the state or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

[FR Doc. 2019–26756 Filed 1–16–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0241; FRL–10003–99–Region 9]

Approval of Air Quality Implementation Plans; California; Coachella Valley; 2008 8-Hour Ozone Nonattainment Area Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, or conditionally approve, all or portions of two state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the Coachella Valley ozone nonattainment area (''Coachella Valley''). The two SIP revisions include the portions of the ''Final 2016 Air Quality Management Plan'' and the ''2018 Updates to the California State Implementation Plan'' that address ozone in the Coachella Valley. These submittals address the nonattainment area requirements for the 2008 8-hour ozone NAAQS, including the requirements for an emissions inventory, emissions statements, attainment demonstration, reasonable further progress (RFP), reasonably available control measures, contingency measures, and motor vehicle emissions budgets. The EPA is proposing to approve these submittals as meeting all the applicable ozone nonattainment area requirements except for the contingency measure requirements, for which the EPA is proposing to conditionally approve the RFP contingency measures and to defer action on the attainment contingency measure.

DATES: Any comments must be submitted by February 18, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0241 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 *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3963, or by email at *ungvarsky.john@epa.gov.*

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

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I. Regulatory Context

A. Ozone Standards, Area Designations and SIPs

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the Clean Air Act (CAA or ''the Act''), the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The NAAQS are concentration levels that the attainment and maintenance of which the EPA has determined to be requisite to protect public health and welfare. Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the nation as either attaining or not attaining the standards.

On February 8, 1979, under section 109 of the CAA, the EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period.[3] On July 18, 1997, the EPA revised the primary and secondary standards for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm averaged over an 8-hour period (''1997 ozone NAAQS'').[4]

In 2008, the EPA lowered the 8-hour ozone NAAQS to 0.075 ppm (''2008 ozone NAAQS'') to replace the 1997 ozone NAAQS of 0.08 ppm.[5] In 2012, the EPA designated the Coachella Valley as nonattainment for the 2008 ozone NAAQS and classified the area as ''Severe-15.''[6] Areas classified as Severe-15 must attain the NAAQS within 15 years of the effective date of the nonattainment designation.[7]

Designations of nonattainment for a given NAAQS trigger requirements under the CAA to prepare and submit SIP revisions. The SIP revisions that are the subject of today's proposed action address the Severe-15 nonattainment area requirements that apply to the Coachella Valley for the 2008 ozone NAAQS.

Under California law, the California Air Resources Board (CARB) is the state agency that is responsible for the adoption and submission to the EPA of California SIPs and SIP revisions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality management plans (AQMPs or ''plans''). In the Coachella Valley, the South Coast Air Quality Management District (SCAQMD or ''District'') develops and adopts AQMPs to address CAA planning requirements applicable to that region. Such plans are then submitted to CARB for adoption and submittal to the EPA as revisions to the California SIP.

B. The Coachella Valley 2008 Ozone Nonattainment Area

The Coachella Valley is located within Riverside County, and its boundaries generally align with the Riverside County portion of the Salton Sea Air Basin (SSAB). For a precise description of the geographic boundaries of the Coachella Valley, see 40 CFR 81.305.

Prior AQMPs and state control measures developed by the District and CARB have produced significant emissions reductions over the years and improved air quality in the Coachella Valley. For instance, the 8-hour ozone design value for the Coachella Valley decreased from 0.110 ppm to 0.088 ppm from 1995 to 2015, despite increases in population and vehicular activity.[8]

The Coachella Valley is downwind from the South Coast Air Basin (''South

[1] The State of California refers to reactive organic gases (ROG) in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this proposed rule.

[2] ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone,'' dated March 2008.

[3] See 44 FR 8202.

[4] See 62 FR 38856. On April 30, 2004, the EPA designated and classified areas of the country with respect to the 1997 ozone NAAQS. See 69 FR 23858. On July 10, 2019, the EPA granted a request from the State of California to reclassify the Coachella Valley ozone nonattainment area from ''Severe-15'' to ''Extreme'' for the 1997 ozone NAAQS. See 84 FR 32841.

[5] 73 FR 16436 (March 27, 2008). The EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, but this proposed action relates to the requirements for the 2008 ozone NAAQS. Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

[6] 77 FR 30088 (May 21, 2012).

[7] CAA section 181(a)(1), 40 CFR 51.1102 and 51.1103(a).

[8] 2016 AQMP, Appendix II (''Current Air Quality''), Table A–8. For the 8-hour ozone NAAQS, the design value at any given monitoring site is the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration. The maximum design value among the various ozone monitoring sites is the design value for the area.

Coast'') and is subject to significant transport of ozone from that area; both ozone nonattainment areas are regulated by the SCAQMD. The Final 2016 Air Quality Management Plan describes ozone transport from the South Coast as follows:

> Atmospheric ozone in the Riverside county portion of the SSAB is both directly transported from the Basin and formed photochemically from precursors emitted upwind. The precursors are emitted in greatest quantity in the coastal and central Los Angeles County areas of the Basin. The Basin's prevailing sea breeze causes polluted air to be transported inland. As the air is being transported inland, ozone is formed, with peak concentrations occurring in the inland valleys of the Basin, extending from eastern San Fernando Valley through the San Gabriel Valley into the Riverside-San Bernardino area and the adjacent mountains. As the air is transported still further inland into the Coachella Valley through the San Gorgonio Pass, ozone concentrations typically decrease due to dilution, although ozone standards can still be exceeded.[9]

Because of the transport from the South Coast into the Coachella Valley, continued progress in the South Coast towards meeting the 1997 and 2008 ozone NAAQS is critical for the Coachella Valley to attain the 2008 ozone NAAQS.

C. Clean Air Act and Regulatory Requirements for 2008 Ozone Nonattainment Area SIPs

States must implement the 2008 ozone NAAQS under title I, part D of the CAA, including sections 171–179B of subpart 1 (''Nonattainment Areas in General'') and sections 181–185 of subpart 2 (''Additional Provisions for Ozone Nonattainment Areas''). To assist states in developing effective plans to address ozone nonattainment problems, in 2015, the EPA issued a SIP Requirements Rule (SRR) for the 2008 ozone NAAQS (''2008 Ozone SRR'') that addressed implementation of the 2008 standards, including attainment dates, requirements for emissions inventories, attainment and reasonable further progress (RFP) demonstrations, among other SIP elements, as well as the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and associated anti-backsliding requirements.[10] The regulatory requirements of the 2008 Ozone SRR are codified at 40 CFR part 51, subpart AA. We discuss the CAA and regulatory planning requirements for the elements of 2008 ozone plans relevant to this proposal in more detail below.

The EPA's 2008 Ozone SRR was challenged, and on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') published its decision in *South Coast Air Quality Management District* v. *EPA* (''*South Coast II*'')[11] vacating portions of the 2008 Ozone SRR. The only aspect of the *South Coast II* decision that affects this proposed action is the vacatur of the alternative baseline year for RFP. More specifically, the 2008 Ozone SRR required states to develop the baseline emissions inventory for RFP using the emissions for the most recent calendar year for which states submit a triennial inventory to the EPA under subpart A (''Air Emissions Reporting Requirements'') of 40 CFR part 51, which was 2011. However, the 2008 Ozone SRR allowed states to use an alternative year, between 2008 and 2012, for the baseline emissions inventory provided that the state demonstrated why the alternative baseline year was appropriate. In the *South Coast II* decision, the D.C. Circuit vacated the provisions of the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP.

II. Submissions From the State of California To Address 2008 Ozone Requirements in the Coachella Valley

A. Summary of Submissions

In this document, we are proposing action on portions of two SIP revisions that are described in detail in the following paragraphs. Collectively, we refer to the relevant portions of the two SIP revisions as the ''2016 Coachella Valley Ozone SIP.''

1. SCAQMD's 2016 Air Quality Management Plan

On April 27, 2017, CARB submitted the Final 2016 Air Quality Management Plan (March 2017) (''2016 AQMP'') to the EPA as a revision to the California SIP.[12] The 2016 AQMP addresses the nonattainment area requirements for the South Coast for the 2008 8-hour ozone NAAQS, the 2006 fine particulate matter ($PM_{2.5}$) NAAQS, and the 2012 $PM_{2.5}$ NAAQS, and for the Coachella Valley for the 2008 8-hour ozone NAAQS. It also updates the approved attainment demonstrations for the 1979 1-hour ozone NAAQS and 1997 8-hour ozone NAAQS for the South Coast and adds new measures to reduce the reliance on section 182(e)(5) new technology measures to attain those standards. On October 1, 2019, the EPA approved portions of the 2016 AQMP and other submittals (collectively referred to as the ''2016 South Coast Ozone SIP'')[13] with respect to numerous requirements for the South Coast relating to the 1979 1-hour, 1997 8-hour, and 2008 8-hour ozone NAAQS.[14] In today's notice, we are proposing action on the portions of the 2016 AQMP that address the 2008 ozone NAAQS for the Coachella Valley.

The SIP revision for the 2016 AQMP includes the various chapters and appendices of the 2016 AQMP, described further below, plus the District's resolution of adoption for the plan (District Resolution 17–2) and CARB's resolution of adoption of the 2016 AQMP as a revision to the California SIP (CARB Resolution 17–8) that includes commitments on which the 2016 AQMP relies.[15] With respect to ozone, the 2016 AQMP addresses the CAA requirements for emissions inventories, air quality modeling demonstrating attainment, reasonably available control measures (RACM), RFP, transportation control strategies and measures, and contingency measures for failure to make RFP, among other requirements.

The 2016 AQMP is organized into eleven chapters. Most of the 2016 AQMP is directly relevant to the ozone and $PM_{2.5}$ NAAQS in the South Coast, and our review for this action addresses only those portions of the 2016 AQMP that address the 2008 ozone NAAQS for

[9] ''Final 2016 Air Quality Management Plan,'' SCAQMD, March 2017, 7–9. See also 2007 AQMP, 7–23 (describing ozone transport through the San Gorgonio Pass and citing early studies documenting this transport).

[10] 80 FR 12264 (March 6, 2015). Anti-backsliding requirements are the provisions applicable to revoked NAAQS (including the 1979 1-hour ozone NAAQS and the 1997 ozone NAAQS) as described in CAA section 172(e).

[11] *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''*South Coast.*'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone NAAQS. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[12] Letter dated April 27, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

[13] The 2016 South Coast Ozone SIP includes five submittals: The 2016 AQMP, the ''Revised Proposed 2016 State Strategy for the State Implementation Plan,'' the ''2018 Updates to the California State Implementation Plan,'' the ''Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration,'' and a SCAQMD emissions statement rule.

[14] 84 FR 52005. The EPA's proposed approval of the 2016 South Coast Ozone SIP is at 84 FR 28132 (June 17, 2019). On February 12, 2019, we approved portions of the 2016 AQMP with respect to the 2006 $PM_{2.5}$ NAAQS (except for the related contingency measure element). See 84 FR 3305.

[15] SCAQMD Board Resolution 17–2, March 3, 2017; CARB Board Resolution 17–8, 2016 Air Quality Management Plan for Ozone and $PM_{2.5}$ in the South Coast and the Coachella Valley, March 23, 2017.

the Coachella Valley.[16] The Coachella Valley is located in the SSAB, which is separate from the upwind South Coast and faces different air quality challenges. Chapter 7, ''Current and Future Air Quality—Desert Nonattainment Areas SIP'' of the 2016 AQMP addresses CAA requirements for the 2008 ozone NAAQS in the Coachella Valley.

Additional chapters in the 2016 AQMP also discuss the Coachella Valley and provide relevant background. Chapter 1, ''Introduction,'' introduces the 2016 AQMP, including its purpose, historical air quality progress in the South Coast and Coachella Valley, and the District's approach to air quality planning. Chapter 2, ''Air Quality and Health Effects,'' discusses current air quality in comparison with federal health-based air pollution standards. Chapter 4, ''Control Strategy and Implementation,'' presents the control strategy, specific measures, and implementation schedules to attain the air quality standards by the specified attainment dates. Chapter 5, ''Future Air Quality,'' describes the modeling and modeled attainment demonstration. Chapter 6, ''Federal and State Clean Air Act Requirements,'' discusses specific federal and state requirements, including anti-backsliding requirements for revoked standards. Chapter 11, ''Public Process and Participation,'' describes the District's public outreach effort associated with the development of the 2016 AQMP. A glossary is provided at the end of the document, presenting definitions of commonly used terms found in the 2016 AQMP.

The 2016 AQMP also includes the following technical appendices:

- Appendix I (''Health Effects'') presents a summary of scientific findings on the health effects of ambient air pollutants.
- Appendix II (''Current Air Quality'') contains a detailed summary of the air quality in 2015, along with prior year trends, in both the South Coast and the Coachella Valley.
- Appendix III (''Base and Future Year Emission Inventory'') presents the 2012 base year emissions inventory and projected emission inventories of air pollutants in future attainment years for both annual average and summer planning inventories in the South Coast.
- Appendix IV–A (''SCAQMD's Stationary and Mobile Source Control Measures'') describes SCAQMD's proposed stationary and mobile source control measures to attain the federal ozone and $PM_{2.5}$ standards.
- Appendix IV–B (''CARB's Mobile Source Strategy'') describes CARB's proposed 2016 strategy to attain health-based federal air quality standards.
- Appendix IV–C (''Regional Transportation Strategy and Control Measures'') describes the Southern California Association of Governments' (SCAG) ''Final 2016–2040 Regional Transportation Plan/Sustainable Communities Strategy'' (2016 RTP/SCS) and transportation control measures.
- Appendix V (''Modeling and Attainment Demonstrations'') provides the details of the regional modeling for the attainment demonstration.
- Appendix VI (''Compliance with Other Clean Air Act Requirements'') provides the District's demonstration that the 2016 AQMP complies with specific CAA requirements.

Attainment of the 2008 ozone NAAQS in the Coachella Valley is heavily dependent on emission reductions occurring in the adjacent South Coast. The emission reductions in the South Coast are described in the 2016 South Coast Ozone SIP. As discussed in section III.D (Attainment Demonstration) of the EPA's proposed approval of the 2016 South Coast Ozone SIP,[17] the ozone attainment demonstrations for the 1997 and 2008 ozone NAAQS include commitments made by the District in the 2016 AQMP and by CARB in the ''Revised Proposed 2016 State Strategy for the State Implementation Plan'' (March 7, 2017) (''2016 State Strategy''). The 2016 State Strategy does not include specific commitments for the Coachella Valley. For details on the District and CARB emissions reduction commitments in the 2016 South Coast Ozone SIP, see the EPA's June 17, 2019 proposed approval action at 84 FR 28132.

2. CARB's 2018 Updates to the California State Implementation Plan

On December 5, 2018, CARB submitted the 2018 Updates to the California State Implementation Plan (''2018 SIP Update'') to the EPA as a revision to the California SIP.[18] CARB adopted the 2018 SIP Update on October 25, 2018. CARB developed the 2018 SIP Update in response to the court's decision in *South Coast II* vacating the 2008 Ozone SRR with respect to the use of an alternate baseline year for demonstrating RFP, and to address contingency measure requirements in the wake of the court decision in *Bahr* v. *EPA*.[19] The 2018 SIP Update includes updates for 8 different California ozone nonattainment areas. We previously approved the San Joaquin Valley and South Coast portions of the 2018 SIP Update.[20] The 2018 SIP Update includes an RFP demonstration using the required 2011 baseline year for the Coachella Valley for the 2008 ozone NAAQS.[21]

The 2018 SIP Update also includes updated motor vehicle emissions budgets and information to support the contingency measure element. To supplement the contingency measures element of the 2016 Coachella Valley Ozone SIP, the District has committed by letter to modify an existing rule or adopt a new rule to create a contingency measure that will be triggered if the area fails to meet an RFP milestone or attain the 2008 ozone NAAQS.[22] CARB transmitted the District's letter to the EPA and committed to submit the revised District rule to the EPA as a SIP revision within 12 months of the EPA's final action on the contingency measure element of the 2016 Coachella Valley Ozone SIP.[23]

[16] The following chapters or portions thereof in the 2016 AQMP were submitted for information only and are not subject to review as part of the SIP revision: The portion of Chapter 6 that is titled ''California Clean Air Act Requirements'' and that discusses compliance with state law requirements for clean air plans; Chapter 8, ''Looking Beyond Current Requirements,'' assesses the South Coast's status with respect to the 2015 8-hour ozone standard of 0.070 ppm; Chapter 9, ''Air Toxic Control Strategy,'' examines the ongoing efforts to reduce health risk from toxic air contaminants, co-benefits from reducing criteria pollutants, and potential future actions; and Chapter 10, ''Climate and Energy,'' provides a description of current and projected energy demand and supply issues in the South Coast, and the relationship between air quality improvement and greenhouse gas mitigation goals. As noted previously, we are not taking action in this rulemaking on the portions of the 2016 AQMP that relate only to the South Coast.

[17] 84 FR 28132 (June 17, 2019). On October 1, 2019, the EPA finalized its approval of the 2016 South Coast Ozone SIP. See 84 FR 52005.

[18] Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[19] *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016). In this case, the court rejected the EPA's longstanding interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures. The court concluded that a contingency measure must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before.

[20] 84 FR 11198 (March 25, 2019) (final approval of the San Joaquin Valley portion of the 2018 SIP Update) and 84 FR 52005 (October 1, 2019) (final approval of the South Coast portion of the 2018 SIP Update).

[21] Because we understand the State intended the RFP demonstration for the Coachella Valley in the 2018 SIP Update to replace the prior RFP demonstration in the 2016 AQMP submitted in April 2017, we plan no further action on the RFP demonstration for Coachella Valley in the 2016 AQMP.

[22] Letter dated August 2, 2019, from Wayne Nastri, SCAQMD Executive Officer, to Richard Corey, Executive Officer, CARB.

[23] Letter dated September 9, 2019, from Michael Benjamin, Chief, Air Quality and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.

B. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions

CAA sections 110(a) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submittal of the SIP revisions that compose the 2016 Coachella Valley Ozone SIP. With respect to the 2016 AQMP, the District held six regional workshops from July 14 through July 21, 2016, and four regional hearings on November 15 and 17, 2016, to discuss the plan and solicit public input.[24] On December 19 and 20, 2016, the District published notices in several local newspapers of a public hearing to be held on February 3, 2017, for the adoption of the 2016 AQMP.[25] On February 3, 2017, the District held the public hearing, and on March 3, 2017, through Resolution 17–2, the District adopted the 2016 AQMP and directed the Executive Officer to forward the plan to CARB for inclusion in the California SIP.

CARB also provided public notice and opportunity for public comment on the 2016 AQMP. On March 6, 2017, CARB released for public review its Staff Report for the 2016 AQMP and published a notice of public meeting to be held on March 23, 2017, to consider adoption of the 2016 AQMP.[26] On March 23, 2017, CARB held the hearing and adopted the 2016 AQMP as a revision to the California SIP, excluding those portions not required to be submitted to the EPA, and directed the Executive Officer to submit the 2016 AQMP to the EPA for approval into the California SIP.[27] On April 27, 2017, the Executive Officer of CARB submitted the 2016 AQMP to the EPA and included the transcript of the hearing held on March 23, 2017.[28] On October 23, 2017, the EPA determined that the portions of this submittal applicable to the 2008 ozone NAAQS were complete.[29]

With respect to the 2018 SIP Update, CARB also provided public notice and opportunity for public comment. On September 21, 2018, CARB released for public review the 2018 SIP Update and published notice of a public meeting to be held on October 23, 2018, to consider adoption of the 2018 SIP Update.[30] On October 23, 2018, through Resolution 18–50, CARB adopted the 2018 SIP Update. On December 5, 2018, CARB submitted the 2018 SIP Update to the EPA.

Based on information provided in each of the SIP revisions summarized above, the EPA has determined that all hearings were properly noticed. Therefore, we find that the submittals of the 2016 AQMP and the 2018 SIP Update meet the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

III. Review of the 2016 Coachella Valley Ozone SIP

A. Emissions Inventories

1. Statutory and Regulatory Requirements

CAA sections 172(c)(3) and 182(a)(1) require states to submit for each ozone nonattainment area a ''base year inventory'' that is a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area. In addition, the 2008 Ozone SRR requires that the inventory year be selected consistent with the baseline year for the RFP demonstration, which is the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the Air Emissions Reporting Requirements.[31]

The EPA has issued guidance on the development of base year and future year emissions inventories for 8-hour ozone and other pollutants.[32] Emissions inventories for ozone must include emissions of VOC and NO_X and represent emissions for a typical ozone season weekday.[33] States should include documentation explaining how the emissions data were calculated. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time the SIP is developed.[34]

Future baseline emissions inventories must reflect the most recent population, employment, travel and congestion estimates for the area. In this context, ''baseline'' emissions inventories refer to emissions estimates for a given year and area that reflect rules and regulations and other measures that are already adopted. Future baseline emissions inventories are necessary to show the projected effectiveness of SIP control measures. Both the base year and future year inventories are necessary for photochemical modeling to demonstrate attainment.

2. Summary of State's Submission

The 2016 AQMP includes a summary of the base year (2012) and future year annual average baseline inventories for NO_X and VOC for the Coachella Valley. Documentation for the inventories is found in Chapter 7 and Appendix III of the 2016 AQMP. Additionally, the District provided the EPA with supplemental documentation (''2016 AQMP Inventory Supplement'') for the 2012 and 2026 ozone season inventories relied on in the 2016 AQMP.[35] The 2018 SIP Update provides detailed NO_X and VOC inventories for 2011 (the base year used for RFP) and 2012, and projected inventories for 2017, 2020, 2023, 2026, and 2027. Because ozone levels in the Coachella Valley are typically higher from May through October, the

[24] See 2016 AQMP, Table 11–2.

[25] Memorandum dated January 24, 2017, from Denise Garzaro, Clerk of the Boards, SCAQMD to Arlene Martinez, Administrative Secretary, Planning, Rule Development and Area Sources, SCAQMD. The memorandum includes copies of the proofs of publication of the notice for the February 3, 2017 public hearing.

[26] Notice of Public Meeting to Consider Adopting the 2016 Air Quality Management Plan for Ozone and $PM_{2.5}$ for the South Coast Air Basin and the Coachella Valley signed by Richard Corey, Executive Officer, CARB, March 6, 2017.

[27] CARB Resolution 17–8, 10.

[28] Transcript of the March 23, 2017 Meeting of the State of California Air Resources Board.

[29] Letter dated October 23, 2017, from Matthew J. Lakin, Acting Director, Air Division, EPA Region IX to Richard Corey, Executive Officer, CARB.

[30] Notice of Public Meeting to Consider the 2018 Updates to the California State Implementation Plan signed by Richard Corey, Executive Officer, CARB, September 21, 2018.

[31] 2008 Ozone SRR at 40 CFR 51.1115(a) and the Air Emissions Reporting Requirements at 40 CFR part 51, subpart A.

[32] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/B–17–002, May 2017. At the time the 2016 AQMP was developed, the following EPA emissions inventory guidance applied: ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' EPA–454–R–05–001, November 2005.

[33] 40 CFR 51.1115(a) and (c), and 40 CFR 51.1100(bb) and (cc).

[34] 80 FR 12264, 12290 (March 6, 2015).

[35] Email dated June 28, 2019, from Zorik Pirveysian, SCAQMD, to John Ungvarsky, EPA, Subject: ''RE: Coachella Valley ozone inventory clarification and update on possible contingency measures.'' The 2016 AQMP Inventory Supplement consists of two attachments to this email, which provide the detailed 2012 and 2026 ozone season inventories that were used for the summary in the 2016 AQMP. The inventories were generated on November 30, 2016.

inventories in the 2016 AQMP Inventory Supplement and the 2018 SIP Update represent average summer day emissions. The inventories in the 2016 AQMP Inventory Supplement and 2018 SIP Update reflect District rules adopted prior to December 2015 and CARB rules adopted by November 2015. For estimating on-road motor vehicle emissions, these inventories use EMFAC2014, the EPA-approved version of California's mobile source emissions model available at the time the 2016 AQMP and 2018 SIP Update were developed.[36]

The VOC and NO_X emissions estimates are grouped into two general categories, stationary sources and mobile sources. Stationary sources are further divided into ''point'' and ''area'' sources. Point sources typically refer to permitted facilities and have one or more identified and fixed pieces of equipment and emissions points. Area sources consist of widespread and numerous smaller emissions sources, such as small permitted facilities and households. The mobile sources category is divided into two major subcategories, ''on-road'' and ''off-road'' mobile sources. On-road mobile sources include light-duty automobiles, light-, medium-, and heavy-duty trucks, and motorcycles. Off-road mobile sources include aircraft, locomotives, construction equipment, mobile equipment, and recreational vehicles.

Point source emissions for the 2012 base year emissions inventory are calculated using reported data from facilities using the District's annual emissions reporting program, which applies under District Rule 301 (''Permitting and Associated Fees'') to stationary sources in the Coachella Valley that emit 4 tons per year (tpy) or more of VOC or NO_X. Area sources include smaller emissions sources distributed across the nonattainment area. CARB and the District estimate emissions for about 400 area source categories using established inventory methods, including publicly-available emissions factors and activity information. Activity data are derived from national survey data such as the Energy Information Administration or from local sources such as the Southern California Gas Company, paint suppliers, and District databases. Emissions factors used for the estimates come from a number of sources including source tests, compliance reports, and the EPA's compilation of emissions factor document known as ''AP–42.''

On-road emissions inventories in the 2016 AQMP Inventory Supplement are calculated using CARB's EMFAC2014 model and the travel activity data provided by SCAG in the 2016 RTP/SCS.[37] CARB provided emissions inventories for off-road equipment, including construction and mining equipment, industrial and commercial equipment, lawn and garden equipment, agricultural equipment, ocean-going vessels, commercial harbor craft, locomotives, cargo handling equipment, pleasure craft, and recreational vehicles. CARB uses several models to estimate emissions for more than one hundred off-road equipment categories.[38] Aircraft emissions inventories are developed in conjunction with the airports in the region.

Table 1 provides a summary of the District's 2012 base year and 2026 attainment year baseline emissions estimates in tons per average summer day for NO_X and VOC. These inventories provide the basis for the control measure analysis and the attainment demonstrations in the 2016 AQMP. Based on the inventory for 2012, stationary and area sources currently account for 39 percent of the VOC emissions and less than 5 percent of the NO_X emissions in the Coachella Valley while mobile sources account for 61 percent of the VOC emissions and over 95 percent of the NO_X emissions. For a more detailed discussion of the methodologies used to develop the inventories, see Appendix III of the 2016 AQMP.

TABLE 1—COACHELLA VALLEY BASE YEAR AND ATTAINMENT YEAR BASELINE EMISSIONS INVENTORIES

[Summer planning inventory, tons per day (tpd)]

Category	2012		2026	
	NO_X	VOC	NO_X	VOC
Stationary and Area Sources	1.2	6.4	1.4	8.8
On-Road Mobile Sources	18.9	6.4	4.1	2.9
Off-Road Mobile Sources	6.5	3.7	3.6	3.3
Total	26.6	16.5	9.1	15.1

Sources: 2016 AQMP Inventory Supplement and 2018 SIP Update, Table VII–1. The sum of the emissions values may not equal the total due to rounding of the numbers.

Future emissions forecasts are primarily based on demographic and economic growth projections provided by SCAG, and control factors developed by the District in reference to the 2012 base year. Growth factors used to project these baseline inventories are derived mainly from data obtained from SCAG.[39]

3. The EPA's Review of the State's Submission

We have reviewed the 2012 base year emissions inventory in the 2016 AQMP Inventory Supplement and the inventory methodologies used by the District and CARB for consistency with CAA requirements and EPA guidance. First, we find that the 2012 inventory includes estimates for VOC and NO_X for a typical ozone season weekday, and that CARB has provided adequate documentation explaining how the emissions are calculated. Second, we find that the 2012 base year emissions inventory in the 2016 AQMP Inventory Supplement reflects appropriate

[36] EMFAC is short for EMission FACtor. The EPA announced the availability of the EMFAC2014 model for use in state implementation plan development and transportation conformity in California on December 14, 2015. 80 FR 77337. The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**. On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. See 84 FR 41717.

[37] See *http://scagrtpscs.net/Pages/FINAL2016RTPSCS.aspx*. SCAG is the metropolitan planning organization for the Coachella Valley and surrounding areas. The SCAG region encompasses six counties (Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura) and 191 cities in an area covering more than 38,000 square miles.

[38] 2016 AQMP, Appendix III, page III–1–24.

[39] 2016 AQMP, 7–25, and Appendix III, page III–2–6.

emissions models and methodologies, and, therefore, represents a comprehensive, accurate, and current inventory of actual emissions during that year in the Coachella Valley nonattainment area. Third, we find that selection of year 2012 for the base year emissions inventory is appropriate because it is consistent with the 2011 RFP baseline year (from the 2018 SIP Update) because both inventories are derived from a common set of models and methods. Therefore, the EPA is proposing to approve the 2012 emissions inventory in the 2016 AQMP Inventory Supplement as meeting the requirements for a base year inventory set forth in CAA section 182(a)(1) and 40 CFR 51.1115.[40]

With respect to the 2026 attainment year baseline projections, we have reviewed the growth and control factors and find them acceptable and conclude that the future baseline emissions projections in the 2016 AQMP Inventory Supplement reflect appropriate calculation methods and the latest planning assumptions. Also, as a general matter, the EPA will approve a SIP revision that takes emissions reduction credit for a control measure only where the EPA has approved the measure as part of the SIP. Thus, to take credit for the emissions reductions from newly-adopted or amended District rules for stationary sources, the related rules must be approved by the EPA into the SIP. Table 2 in the technical support document (TSD) accompanying this rulemaking shows District rules with post-2012 compliance dates that were incorporated in the future year inventories, along with information on EPA approval of these rules, and shows that emissions reductions assumed by the 2016 AQMP for future years for stationary sources are supported by rules approved as part of the SIP. With respect to mobile sources, the EPA has taken action in recent years to approve CARB mobile source regulations into the California SIP.[41] We therefore find that the future year baseline projections in the 2016 AQMP Inventory Supplement are properly supported by SIP-approved stationary and mobile source measures.[42]

B. Emissions Statement

1. Statutory and Regulatory Requirements

Section 182(a)(3)(B)(i) of the Act requires states to submit a SIP revision requiring owners or operators of stationary sources of VOC or NO_X to provide the state with statements of actual emissions from such sources. Statements must be submitted at least every year and must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. Section 182(a)(3)(B)(ii) of the Act allows states to waive the emissions statement requirement for any class or category of stationary sources that emit less than 25 tpy of VOC or NO_X, if the state provides an inventory of emissions from such class or category of sources as part of the base year or periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), based on the use of emissions factors established by the EPA or other methods acceptable to the EPA.

The preamble of the 2008 Ozone SRR states that if an area has a previously approved emissions statement rule for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS. The state should review the existing rule to ensure it is adequate and, if so, may rely on it to meet the emissions statement requirement for the 2008 ozone NAAQS.[43] Where an existing emissions statement requirement is still adequate to meet the requirements of this rule, states can provide the rationale for that determination to the EPA in a written statement in the SIP to meet this requirement. States should identify the various requirements and how each is met by the existing emissions statement program. Where an emissions statement requirement is modified for any reason, states must provide the revision to the emissions statement as part of its SIP.

2. Summary of the State's Submission

The 2016 AQMP addresses compliance with the emissions statement requirement in CAA section 182(a)(3)(B) for the 2008 ozone NAAQS by reference to District Rule 301 that, among other things, requires emissions reporting from all stationary sources of NO_X and VOC greater than or equal to 4 tpy. District Rule 301 applies throughout both the South Coast and the Coachella Valley. On July 12, 2019, the District adopted revisions to District Rule 301 to meet the requirements in CAA section 182(a)(3)(B), and on July 19, 2019, the District submitted to CARB a request for Rule 301 to be included into the California SIP and forwarded to the EPA. On August 5, 2019, CARB adopted and submitted paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8) of District Rule 301 to the EPA as a revision to the California SIP. The submittal includes CARB Executive Order S–19–011 adopting the specified sections of District Rule 301 as a revision to the SIP, a copy of District Rule 301 itself, and documentation of public notice and opportunity to comment on the draft rule.

3. The EPA's Review of the State's Submission

On October 1, 2019, as part of our approval of the 2016 South Coast Ozone SIP, the EPA approved portions of District Rule 301 (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)) as meeting the emissions statement requirement under CAA section 182(a)(3)(B) for the South Coast for the 2008 ozone NAAQS.[44] Rule 301 is effective throughout both the South Coast and the Coachella Valley. Therefore, the approved portions of District Rule 301 also satisfy the CAA 182(a)(3)(B) requirements for the 2008 ozone NAAQS in the Coachella Valley.

C. Reasonably Available Control Measures Demonstration and Control Strategy

1. Statutory and Regulatory Requirements

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM as

[40] The 2012 base year inventory from the 2016 AQMP Inventory Supplement revises and updates the base year emission inventory included in the ''8-Hour Ozone State Implementation Plan Emission Inventory Submittal'' submitted by CARB on July 17, 2014. Because we understand the State intended the 2016 AQMP and the 2016 AQMP Inventory Supplement to replace the July 2014 submittal (at least with respect to Coachella Valley), we plan no further action on the inventory for Coachella Valley submitted by CARB in July 2014.

[41] See 81 FR 39424 (June 16, 2016), 82 FR 14446 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

[42] The baseline emissions projections in the 2016 South Coast Ozone SIP assume implementation of CARB's Zero Emissions Vehicle (ZEV) sales mandate and greenhouse gas (GHG) standards. On September 27, 2019, the U.S. Department of Transportation and the EPA issued a notice of final rulemaking for the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program that, among other things, withdrew the EPA's 2013 waiver of preemption of CARB's ZEV sales mandate and GHG standards. 84 FR 51310. See also proposed SAFE rule at 83 FR 42986 (August 24, 2018). However, the agencies' final rule withdrawing the 2013 waiver did not include final action on the federal fuel economy and GHG vehicle emissions standards from the SAFE proposal. If the fuel economy and GHG standards are finalized prior to our final rulemaking on the 2016 Coachella Valley Ozone SIP, we will evaluate and address, as appropriate, the impact of the SAFE action on our proposed action.

[43] See 80 FR 12264, at 12291 (March 6, 2015).

[44] 84 FR 52005, 52015.

expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through implementation of reasonably available control technology (RACT)), and also provide for attainment of the NAAQS. The 2008 Ozone SRR requires that, for each nonattainment area required to submit an attainment demonstration, the state concurrently submit a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.[45]

The EPA has previously provided guidance interpreting the RACM requirement in the General Preamble for the Implementation of the Clean Air Act Amendments of 1990 (''General Preamble'') and in a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' [46] In short, to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more.[47] Any measures that are necessary to meet these requirements that are not already either federally promulgated, or part of the state's SIP, must be submitted in enforceable form as part of the state's attainment plan for the area.[48]

2. Summary of the State's Submission

For the 2016 Coachella Valley Ozone SIP, the District, CARB, and SCAG each undertook a process to identify and evaluate potential RACM that could contribute to expeditious attainment of the 2008 ozone NAAQS in the Coachella Valley. The RACM demonstration for the Coachella Valley is the same demonstration undertaken for the 2016 South Coast Ozone SIP that the EPA approved on November 1, 2019.[49]

a. District's RACM Analysis

The District's RACM demonstration for the 2008 ozone NAAQS focuses on stationary and area source controls, and it is described in Appendix VI–A (''Reasonably Available Control Measures (RACM)/Best Available Control Measures (BACM) Demonstration'') of the 2016 AQMP. Appendix VI–A identifies potential control measures and analyzes these measures for emission reduction opportunities, as well as economic and technological feasibility. The District's comprehensive demonstration considers potential control measures for stationary and area sources located throughout the areas under its jurisdiction, including both the South Coast (where most of the sources are located) and the Coachella Valley. Therefore, the demonstration includes not only all of the source categories present in the Coachella Valley, but also the source categories found only in the South Coast.

As a first step in the RACM analysis, the District prepared a detailed inventory of emissions sources that emit VOC and NO_X to identify source categories from which emissions reductions would effectively contribute to attainment. Details on the methodology and development of the emissions inventory are discussed in Chapter 7 and Appendix III of the 2016 AQMP. A total of 76 source categories are included in the base year emissions inventory: 46 for stationary and area sources and 30 for mobile sources.[50]

For the RACM analysis, the District then compared these source categories to its rules for stationary and area sources. This analysis builds upon a foundation of District rules developed for earlier ozone plans and approved as part of the SIP. We provide a list of the District's NO_X and VOC rules approved into the California SIP in Table 1 of our TSD for this proposed action. The 86 SIP-approved District VOC or NO_X rules listed in Table 1 of our TSD establish emissions limits or other types of emissions controls for a wide range of sources, including use of solvents, refineries, gasoline storage, architectural coatings, spray booths, various types of commercial coatings, boilers, steam generators and process heaters, oil and gas production well, marine tank vessel operations, and many more. These rules have already provided significant reductions toward attainment of the 2008 ozone NAAQS by 2026.

To demonstrate that the SCAQMD considered all candidate measures that are available and technologically and economically feasible, the District conducted a six-step analysis, as described below.

Step 1. 2015 Air Quality Technology Symposium (''2015 Symposium'')

The 2015 Symposium was held on June 10 and 11, 2015, with participation of technical experts and the public to solicit new and innovative concepts to assist in attaining the 1997 and 2008 ozone NAAQS by the applicable attainment dates. The SCAQMD also conducted extensive outreach to engage a wide range of stakeholders in the process.

Step 2. Reasonably Available Control Technology/Best Available Control Technology Analysis

The District's Reasonably Available Control Technology/Best Available Control Technology (RACT/BACT) analysis[51] found four SCAQMD VOC or NO_X rules (*i.e.,* District Rules 462 (''Organic Liquid Loading''), 1115 (''Motor Vehicle Assembly Line Coating Operations''), 1118 (''Control of Emissions from Refinery Flares'') and 1138 (''Control of Emissions from

[45] 40 CFR 51.1112(c).

[46] See General Preamble, 57 FR 13498, 13560 (April 16, 1992) and memorandum dated November 30, 1999, from John Seitz, Director, OAQPS, to Regional Air Directors, titled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.''

[47] Id. See also 44 FR 20372 (April 4, 1979), and memorandum dated December 14, 2000, from John S. Seitz, Director, OAQPS, to Regional Air Directors, titled ''Additional Submission on RACM From States with Severe One-Hour Ozone Nonattainment Area SIPs.''

[48] For ozone nonattainment areas classified as Moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which the EPA has issued a control techniques guideline. CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In Severe areas, a major source is a stationary source that emits or has the potential to emit at least 25 tpy of VOC or NO_X (see CAA section 182(e) and (f)). Under the 2008 Ozone SRR, states were required to submit SIP revisions meeting the RACT requirements of CAA sections 182(b)(2) and 182(f) no later than 24 months after the effective date of designation for the 2008 Ozone NAAQS and to implement the required RACT measures as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (see 40 CFR 51.1112(a)). California submitted the CAA section 182 RACT SIP for the South Coast and the Coachella Valley on July 18, 2014, and the EPA fully approved this submission at 82 FR 43850 (September 20, 2017).

[49] 84 FR 52005.

[50] 2016 AQMP, Appendix VI–A, Table VI–A–3. The majority of the stationary emissions sources included in this inventory are located in the South Coast. The 2016 AQMP identifies only two stationary sources (*i.e.,* Desert View Power and Imperial Irrigation District) emitting 10 tpy or more of either VOC or NO_X in 2012 located within the Coachella Valley. See 2016 AQMP, Appendix III, Attachment C. CARB's Facility Search Engine database shows three sources (*i.e.,* Desert View Power, Palm Springs International Airport, and Sentinel Energy Center LLC) emitting 10 tpy or more of either VOC or NO_X emissions in 2017 located in the Coachella Valley. See the docket for today's action or go to CARB's database at *https://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php* and set Air Basin search filter to ''Salton Sea.''

[51] BACM, including BACT, is a requirement for certain $PM_{2.5}$ nonattainment areas. BACM is not a requirement for ozone nonattainment areas, but because the District addresses both $PM_{2.5}$ and ozone in its 2016 AQMP, the District prepared an analysis that addresses both RACT and BACT.

Restaurant Operations''))) that are less stringent than EPA control techniques guidelines or analogous rules in other air districts. The SCAQMD evaluated the rules as candidate potential measures. See section IV of the TSD for this action for the EPA's evaluation of the four rules.

Step 3. EPA TSDs

The District researched TSDs from recent EPA rulemakings on SCAQMD rules for EPA recommendations on potential control measures. The TSD for the EPA's action on District Rule 1125 (''Metal Container, Closure, and Coil Coating Operations,'' amended March 7, 2008) was the only applicable and recent TSD that met the criteria for review.

Step 4. Control Measures in Other Areas

The District reviewed control measures in other areas (*i.e.,* Ventura County, San Francisco Bay Area, San Joaquin Valley, Sacramento Metropolitan, Dallas-Fort Worth and Houston-Galveston-Brazoria, New York, and New Jersey) to evaluate whether control technologies available and cost-effective within other areas would be available and cost-effective for use in the South Coast and the Coachella Valley.

Step 5. Control Measures beyond RACM in 2012 AQMP

The District updated the RACM analysis for four control measures that were determined to be beyond RACM in the analysis for the prior 2012 AQMP, including reconsideration of emissions reductions of VOC from greenwaste composting.

Step 6. EPA Menu of Control Measures

The Menu of Control Measures (MCM) [52] compiled by the EPA's Office of Air Quality Planning and Standards was created to provide information useful in the development of emissions reduction strategies and to identify and evaluate potential control measures. District staff reviewed the MCM for point and nonpoint sources of NO_X and VOC.

The District provides a comprehensive evaluation of its RACM control strategy in Appendix VI–A of the 2016 AQMP. The evaluation includes the following: Source descriptions; base year and projected baseline year emissions for the source category affected by the rule; discussion of the current requirements of the rule; and discussion of potential additional control measures, including, in many cases, a discussion of the technological and economic feasibility of the additional control measures. This includes comparison of each District rule to analogous control measures adopted by other agencies.

Based on its RACM analysis for stationary and area sources under its jurisdiction, the District identified the following three additional RACM with quantifiable VOC and NO_X emission reductions: CMB–02—Emission Reductions from Replacement with Zero or Near-Zero NO_X Appliances in Commercial and Residential Applications; CMB–03—Emission Reductions from Non-Refinery Flares; and BCM–10—Emission Reductions from Greenwaste Composting. These three RACM are included in the District's stationary source measures in Table 4–2 of the 2016 AQMP that the District Board adopted through Resolution 17–2. For the few remaining measures that the District rejected from its RACM analysis, the District determined that these measures would not collectively advance the attainment date or contribute to RFP due to the uncertain or non-quantifiable emissions reductions they would potentially generate.[53]

Based on its evaluation of all available measures, the District concluded that its existing rules are generally as stringent as, or more stringent than, the analogous rules in other districts. Further, the District concluded that, based on its comprehensive review and evaluation of potential candidate measures and the adoption of commitments to implement the three measures determined to be technologically and economically feasible, the District meets the RACM requirement for the 2008 ozone NAAQS for all sources under the District's jurisdiction.

Lastly, the District concluded that its controls will achieve attainment for the ozone standards as expeditiously as possible, and that the available control measures not included as plan commitments would not collectively advance attainment.[54]

b. Local Jurisdictions' RACM Analysis and Transportation Control Measures

Appendix IV–C of the 2016 AQMP, contains the transportation control measure (TCM) RACM component for the 2016 South Coast Ozone SIP. The TCMs in Appendix IV–C are applicable in the upwind South Coast Air Basin. Because of the significant influence of pollutant transport from the South Coast Air Basin on ozone conditions in the Coachella Valley, neither the District nor CARB rely on implementation of any TCMs in the Coachella Valley to demonstrate implementation of RACM in the 2016 Coachella Valley Ozone SIP. SCAG conducted the TCM RACM analysis on behalf of the local jurisdictions in its region, based on its 2016 RTP/SCS and 2015 Federal Transportation Improvement Program (FTIP), as amended.[55] The 2016 RTP/SCS and FTIP were developed in consultation with federal, state and local transportation and air quality planning agencies and other stakeholders. The four county transportation commissions (CTCs),[56] including the Riverside CTC overseeing the Coachella Valley, were involved in the development of the regional transportation measures in Appendix IV–C.[57]

As described in Appendix IV–C of the 2016 AQMP, for the TCM RACM analysis, SCAG compared the list of measures implemented within the South Coast with those implemented in other ozone and $PM_{2.5}$ nonattainment areas.[58] SCAG then organized measures, including candidate measures and those measures currently implemented in the region, according to the sixteen categories specified in section 108(f)(1)(A) of the CAA. SCAG found a small number of candidate measures that were not currently implemented in the region and not included in the prior 2012 AQMP TCM RACM analysis. Attachment A (''Committed Transportation Control Measures (TCMs)'') to Appendix IV–C of the 2016 AQMP lists the TCM projects that are specifically identified and committed to in the 2016 AQMP. The complete listing of all candidate measures evaluated for the RACM determination is included in Attachment B (''2016 South Coast AQMP Reasonably Available Control Measures (RACM) Analysis—TCMs'') to Appendix IV–C of the 2016 AQMP. Based on its comprehensive review of TCM projects in other nonattainment

[52] EPA, MCM, *http://www3.epa.gov/ttn/naaqs/pdfs/MenuOfControlMeasures.pdf.*

[53] 2016 AQMP, Appendix VI–A, page VI–A–40, and Attachments VI–A–1c, VI–A–1d, and VI–A–2.

[54] 2016 AQMP, Appendix VI, page VI–A–40.

[55] The 2016 RTP/SCS was adopted by SCAG's Regional Council on April 7, 2016. The 2015 FTIP was adopted by SCAG's Executive/Administration Committee on September 11, 2014, and approved by the Federal Highway Administration on December 14, 2014.

[56] Los Angeles County Metropolitan Transportation Authority, Riverside County Transportation Commission, Orange County Transportation Authority, and the San Bernardino County Transportation Authority (formerly known as the San Bernardino Associated Governments).

[57] 2016 AQMP, Appendix IV–C, page IV–C–1.

[58] The specific nonattainment area SIPs that were reviewed for candidate TCMs for ozone are listed in Table 4 of Appendix IV–C of the 2016 AQMP.

areas or otherwise identified, SCAG determined that the TCMs being implemented in the South Coast are inclusive of all RACM.[59]

c. CARB's RACM Analysis

CARB's RACM analysis is contained in Attachment VI–A–3 (''California Mobile Source Control Program Best Available Control Measures/Reasonably Available Control Measures Assessment'') (''BACM/RACM assessment'') to Appendix VI–A of the 2016 AQMP.

CARB's BACM/RACM assessment provides a general description of CARB's existing mobile source programs. A more detailed description of CARB's mobile source control program, including a comprehensive table listing on- and off-road mobile source regulatory actions taken by CARB since 1985, is contained in Attachment VI–C–1 to Appendix VI–C of the 2016 AQMP. The BACM/RACM assessment and 2016 State Strategy collectively contain CARB's evaluation of mobile source and other statewide control measures that reduce emissions of NO_X and VOC in California, including the Coachella Valley. The 2016 State Strategy also includes a commitment to take action on new measures and to achieve aggregate emissions reductions in the South Coast.[60] Because the Coachella Valley's attainment of the 2008 ozone NAAQS is dependent on progress made in the upwind South Coast, this commitment will contribute to attainment in the Coachella Valley. On October 1, 2019, the EPA approved the 2016 South Coast Ozone SIP, including CARB's commitment.[61] For additional details on CARB's commitment, see section III.D.2.b.ii of our notice for the proposed action.[62]

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. CARB developed its 2016 State Strategy through a multi-step measure development process, including extensive public consultation, to develop and evaluate potential strategies for mobile source categories under CARB's regulatory authority that could contribute to expeditious attainment of the standard.[63] Through the process of developing the 2016 State Strategy, CARB identified certain defined measures as available to achieve additional VOC and NO_X emissions reductions from sources under CARB jurisdiction, including tighter requirements for new light- and medium-duty vehicles (referred to as the ''Advanced Clean Cars 2'' measure), a low-NO_X engine standard for vehicles with new heavy-duty engines, tighter emissions standards for small off-road engines, and more stringent requirements for consumer products, among others.[64] In adopting the 2016 State Strategy, CARB commits to bringing the defined measures to the CARB Board for action according to the specific schedule included as part of the strategy.[65]

Given the need for substantial emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, CARB established stringent control measures for on-road and off-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver by the EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to include standards and other requirements to control emissions from in-use heavy-duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have been submitted and approved as revisions to the California SIP.[66]

In the BACM/RACM assessment, CARB concludes that, in light of the extensive public process culminating in the 2016 State Strategy, with the current mobile source program and proposed measures included in the 2016 State Strategy, there are no additional RACM that would advance attainment of the 2008 ozone NAAQS in the South Coast. As a result, CARB concludes that California's mobile source programs fully meet the RACM requirement.[67]

Appendix IV–B of the 2016 AQMP describes CARB's current consumer products program and commitments in the 2016 State Strategy to achieve additional VOC reductions from consumer products.[68] As described in this section, CARB's current consumer products program limits VOC emissions from 129 consumer product categories, including product categories such as antiperspirants and deodorants and aerosol coatings.[69] The EPA has approved many of these measures into the California SIP as VOC emissions controls for a wide array of consumer products.[70]

3. The EPA's Review of the State's Submission

As described above, the District already implements many rules to reduce VOC and NO_X emissions from stationary and area sources in the Coachella Valley. For the 2016 AQMP, the District evaluated a range of potentially available measures and committed to adopt certain additional measures (*i.e.,* CMB–02, CMB–03, and BCM–10) found to be reasonably available for implementation in the South Coast and Coachella Valley nonattainment areas. We find that the process followed by the District in the 2016 AQMP to identify additional RACM is generally consistent with the EPA's recommendations in the General Preamble, that the District's evaluation of potential measures is appropriate, and that the District has provided reasoned justifications for rejection of measures deemed not reasonably available.

With respect to mobile sources, CARB's current program addresses the full range of mobile sources in the South Coast and Coachella Valley through regulatory programs for both new and in-use vehicles. Moreover, we find that the process conducted by CARB to prepare the 2016 State Strategy was reasonably designed to identify additional available measures within CARB's jurisdiction, and that CARB has

[59] Appendix IV–C, page IV–C–30.

[60] 2016 State Strategy, Chapter 3 (''Proposed SIP Commitment''),

[61] 84 FR 52005, 52015.

[62] 84 FR 28132, 28147.

[63] Appendix VI–A, Attachment VI–A–3, page VI–A–102.

[64] 2016 State Strategy, Chapter 4 (''State SIP Measures'').

[65] CARB Resolution 17–7 (dated March 23, 2017), 7.

[66] See, *e.g.,* the EPA's approval of standards and other requirements to control emissions from in-use heavy-duty diesel-powered trucks, at 77 FR 20308 (April 4, 2012), revisions to the California on-road reformulated gasoline and diesel fuel regulations at 75 FR 26653 (May 12, 2010), and revisions to the California motor vehicle inspection and maintenance program at 75 FR 38023 (July 1, 2010).

[67] 2016 AQMP, Appendix VI, page VI–A–106.

[68] 2016 AQMP, Appendix IV–B, page IV–B–93. CARB's consumer product measures are found in the California Code of Regulations, Title 17 (''Public Health''), Division 3 (''Air Resources''), Chapter 1 (''Air Resources Board''), Subchapter 8.5 (''Consumer Products'').

[69] 2016 AQMP, Appendix IV–B, page IV–B–93.

[70] The compilation of such measures that have been approved into the California SIP, including **Federal Register** citations, is available at: *https://www.epa.gov/sips-ca/epa-approved-regulations-california-sip.* EPA's most recent approval of amendments to California's consumer products regulations was in 2014. 79 FR 62346 (October 17, 2014).

adopted those measures that are reasonably available (*e.g.,* the low-NO_X heavy-duty engine standard, among others). With respect to TCMs, we find that SCAG's process for identifying additional TCM RACM and conclusion that the TCMs being implemented in the South Coast (*i.e.,* the TCMs listed in Attachment A to Appendix IV–C of the 2016 AQMP) are inclusive of all TCM RACM to be reasonably justified and supported. For the 2016 Coachella Valley Ozone SIP, given the significant influence of pollutant transport from the South Coast Air Basin and the minimal and diminishing emissions benefits generally associated with TCMs, no TCM or combination of TCMs implemented in the Coachella Valley would advance the attainment date in the Coachella Valley. Therefore, no TCMs are reasonably available for implementation in the Coachella Valley for the purposes of meeting the RACM requirement.

Additionally, we find that CARB's consumer products program comprehensively addresses emissions from consumer products in the South Coast and Coachella Valley. CARB measures are more stringent than the EPA's consumer products regulation promulgated in 1998,[71] and generally exceed the controls in place throughout other areas of the country. The additional commitments included in the 2016 State Strategy will further strengthen this program by achieving additional VOC reductions.

Based on our review of these RACM analyses, the District's and CARB's adopted rules, and the District's commitment to adopt three additional reasonably available measures (*i.e.,* CMB–02, CMB–03, and BCM–10), we propose to find that there are currently no additional RACM (including RACT) that would advance attainment of the 2008 ozone NAAQS in the Coachella Valley, and that the 2016 Coachella Valley Ozone SIP provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c). For additional background on the EPA's evaluation of the District's RACM analysis, see our June 17, 2019 notice of proposed rulemaking on the 2016 South Coast Ozone SIP.[72]

D. Attainment Demonstration

1. Statutory and Regulatory Requirements

An attainment demonstration consists of: (1) Technical analyses, such as base year and future year modeling, to locate and identify sources of emissions that are contributing to violations of the ozone NAAQS within the nonattainment area (*i.e.,* analyses related to the emissions inventory for the nonattainment area and the emissions reductions necessary to attain the standards); (2) a list of adopted measures (including RACT controls) with schedules for implementation and other means and techniques necessary and appropriate for demonstrating RFP and attainment as expeditiously as practicable but no later than the outside attainment date for the area's classification; (3) a RACM analysis; and (4) contingency measures required under sections 172(c)(9) and 182(c)(9) of the CAA that can be implemented without further action by the state or the EPA to cover emissions shortfalls in RFP and failures to attain.[73] This subsection of today's proposed rule addresses the first two components of the attainment demonstration—the technical analyses and a list of adopted measures. Section III.C (Reasonably Available Control Measures Demonstration and Control Strategy) of this document addresses the RACM component, and section III.G (Contingency Measures) addresses the contingency measures component of the attainment demonstration in the 2016 Coachella Valley Ozone SIP.

With respect to the technical analyses, section 182(c)(2)(A) of the CAA requires that a plan for an ozone nonattainment area classified Serious or above include a ''demonstration that the plan . . . will provide for attainment of the ozone [NAAQS] by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined . . . to be at least as effective.'' The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors, including the effect of control measures in the plan.

Areas classified Severe for the 2008 ozone NAAQS must demonstrate attainment as expeditiously as practicable, but no later than 15 years after the effective date of designation to nonattainment. The Coachella Valley was designated nonattainment for the 2008 ozone NAAQS effective July 20, 2012,[74] and accordingly the area must demonstrate attainment of the standards by July 20, 2027.[75] An attainment demonstration must show attainment of the standards by the calendar year prior to the attainment date, so in practice, Severe nonattainment areas must demonstrate attainment in 2026.

The EPA's recommended procedures for modeling ozone as part of an attainment demonstration are contained in ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'' (''Modeling Guidance'').[76] The Modeling Guidance includes recommendations for a modeling protocol, model input preparation, model performance evaluation, use of model output for the numerical NAAQS attainment test, and modeling documentation. Air quality modeling is performed using meteorology and emissions from a base year, and the predicted concentrations from this base case modeling are compared to air quality monitoring data from that year to evaluate model performance.

Once the model performance is determined to be acceptable, future year emissions are simulated with the model. The relative (or percent) change in modeled concentration due to future emissions reductions provides a relative response factor (RRF). Each monitoring site's RRF is applied to its monitored base year design value to provide the future design value for comparison to the NAAQS. The Modeling Guidance also recommends supplemental air quality analyses, which may be used as part of a weight of evidence (WOE) analysis. A WOE analysis corroborates the attainment demonstration by considering evidence other than the main air quality modeling attainment test, such as trends and additional monitoring and modeling analyses.

The Modeling Guidance also does not require a particular year to be used as the base year for 8-hour ozone plans.[77] The Modeling Guidance states that the most recent year of the National Emissions Inventory may be appropriate

[71] 63 FR 48819 (September 11, 1998).

[72] 84 FR 28132, 28140. See also the EPA's November 1, 2019 approval of the 2016 South Coast Ozone SIP at 84 FR 52005.

[73] 78 FR 34178, 34184 (June 6, 2013) (proposed rule for implementing the 2008 ozone NAAQS).

[74] 77 FR 30087 (May 21, 2012).

[75] 80 FR 12264.

[76] Modeling Guidance, EPA 454/R–18–009, November 2018. See *https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf.* The Modeling Guidance updates, but is largely consistent with, the earlier ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze,'' EPA–454/B–07–002, April 2007. Additional EPA modeling guidance can be found in 40 CFR 51 Appendix W, ''Guideline on Air Quality Models,'' 82 FR 5182 (January 17, 2017); available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

[77] Modeling Guidance at section 2.7.1, 35.

for use as the base year for modeling, but that other years may be more appropriate when considering meteorology, transport patterns, exceptional events, or other factors that may vary from year to year.[78] Therefore, the base year used for the attainment demonstration need not be the same year used to meet the requirements for emissions inventories and RFP.

With respect to the list of adopted measures, CAA section 172(c)(6) requires that nonattainment area plans include enforceable emissions limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for timely attainment of the NAAQS.[79] Under the 2008 Ozone SRR, all control measures needed for attainment must be implemented no later than the beginning of the attainment year ozone season.[80] The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date.[81]

2. Summary of the State's Submission

a. Photochemical Modeling

The 2016 Coachella Valley Ozone SIP includes photochemical modeling for the 2008 ozone NAAQS. The SCAQMD performed the air quality modeling for the 2016 Coachella Valley Ozone SIP. The modeling relies on a 2012 base year and demonstrates attainment of the 2008 ozone NAAQS in 2026.

As a general matter, the modeling for the 2016 Coachella Valley Ozone SIP represents an update to the photochemical modeling performed for the EPA-approved 2012 AQMP to account for more recent satellite-based input data, improved chemical gaseous and particulate mechanisms, improved computational resources and post-processing utilities, enhanced spatial and temporal allocations of the emissions inventory, and a revised attainment demonstration methodology. The modeling and modeled attainment demonstration are described in Chapter 5 (''Future Air Quality'') of the 2016 AQMP. Chapter 7 (''Current and Future Air Quality: Desert Nonattainment Areas SIP'') provides background information on the Coachella Valley, as well as the ozone attainment demonstration. Appendix V (''Modeling and Attainment Demonstration'') of the 2016 AQMP provides a description of model input preparation procedures, various model configuration options, and model performance statistics. The modeling protocol is in Chapter 2 (''Modeling Protocol'') of Appendix V of the 2016 AQMP and contains all the elements recommended in the Modeling Guidance. Those include: Selection of model, time period to model, modeling domain, and model boundary conditions and initialization procedures; a discussion of emissions inventory development and other model input preparation procedures; model performance evaluation procedures; selection of days; and other details for calculating RRFs. Appendix V of the 2016 AQMP provides the coordinates of the modeling domain and thoroughly describes the development of the modeling emissions inventory, including its chemical speciation, its spatial and temporal allocation, its temperature dependence, and quality assurance procedures. Appendix C of CARB's Staff Report for the 2016 AQMP, entitled ''Coachella Valley Weight of Evidence,'' provides additional information about ozone formation and trends in the Coachella Valley.

The modeling analysis used version 5.0.2 of the Community Multiscale Air Quality (CMAQ) photochemical model, developed by the EPA. To prepare meteorological input for CMAQ, the Weather and Research Forecasting model version 3.6 (WRF) from the National Center for Atmospheric Research was used. CMAQ and WRF are both recognized in the Modeling Guidance as technically sound, state-of-the-art models. The areal extent and the horizontal and vertical resolution used in these models were adequate for modeling Coachella Valley ozone.

The WRF meteorological model results and performance statistics are described in Chapter 3 (''Meteorological Modeling and Sensitivity Analyses'') of Appendix V. The District evaluated the performance of the WRF model through a series of simulations and concluded that the daily WRF simulation for 2012 provided representative meteorological fields that well characterized the observed conditions. The District's conclusions were supported by hourly time series graphs of wind speed, direction, and temperature for the southern California domain, included as Attachment 1 (''WRF Model Performance Time Series'') to Appendix V.

Ozone model performance statistics are described in the 2016 AQMP Appendix V, Chapter 5 (''8-Hour Ozone Attainment Demonstration'') which include tables of statistics recommended in the Modeling Guidance for ozone for the South Coast sub-regions, including the Coachella Valley.[82] Hourly time series are presented as well as density scatter plots, and plots of bias against concentration. Note that, because only relative changes are used from the modeling, the underprediction of ozone concentrations does not mean that future concentrations will be underestimated.

After model performance for the 2012 base case was accepted, the model was applied to develop RRFs for the attainment demonstration. This entailed running the model with the same meteorological inputs as before, but with adjusted emissions inventories to reflect the expected changes between 2012 and the 2026 attainment year. The base year or ''reference year'' modeling inventory was the same as the inventory for the modeling base case. The 2026 inventory projects the base year into the future by including the effect of economic growth and emissions control measures. The set of 153 days from May 1 through September 30, 2012, was simulated and analyzed to determine 8-hour average maximum ozone concentrations for the 2012 and 2026 emissions inventories. To develop the RRFs for the 8-hour ozone NAAQS, only the top 10 days were used, consistent with the Modeling Guidance.[83]

The Modeling Guidance addresses attainment demonstrations with ozone NAAQS based on 8-hour averages, and for the 2008 ozone NAAQS, the 2016 AQMP carried out the attainment test procedure consistent with the Modeling Guidance. The RRFs were calculated as the ratio of future to base year concentrations. The resulting RRFs were then applied to 2012 weighted base year design values[84] for each monitor to arrive at 2026 future year design values. Ozone is measured continuously at two locations in the Coachella Valley at the Palm Springs and Indio air monitoring stations. The modeled 2026 ozone design value at the Palm Springs site (the higher of the two sites) is 0.075 ppm; this value demonstrates attainment of the 2008 ozone NAAQS.[85]

[78] Id.

[79] See also CAA section 110(a)(2)(A).

[80] 40 CFR 51.1108(d).

[81] 40 CFR 51.1100(h).

[82] The other sub-regions are the ''Coastal,'' ''San Fernando,'' ''Foothills,'' ''Urban Source,'' and ''Urban Receptor'' zones.

[83] See Modeling Guidance at section 4.2.1.

[84] The Modeling Guidance recommends that RRFs be applied to the average of three three-year design values centered on the base year, in this case the design values for 2010–2012, 2011–2013, and 2012–2014. This amounts to a 5-year weighted average of individual year 4th high concentrations, centered on the base year of 2012, and so is referred to as a weighted design value.

[85] 2016 AQMP, Appendix V, page V–5–28.

The 2016 AQMP modeling includes a WOE demonstration, based on a model performance evaluation of the temporal profile of on-road mobile source emissions and spatial surrogate profiles of area emissions.[86] The demonstration is based on a sensitivity analysis of four scenarios of emissions reductions. Appendix C of CARB's Staff Report for the 2016 AQMP also provides a WOE discussion that includes information about ozone formation in the Coachella Valley. The WOE demonstration in Appendix C includes ambient ozone data and trends, precursor emissions trends and reductions, and population exposure trends to complement the regional photochemical modeling analyses.

b. Control Strategy for the 2008 Ozone NAAQS

The control strategy for attainment of the 2008 ozone NAAQS in the Coachella Valley relies primarily on timely attainment in 2023 of the 1997 ozone NAAQS in the South Coast. Continued air quality improvement in the Coachella Valley is expected during the 2023 through 2026 timeframe because of ongoing fleet turnover in the Coachella Valley and South Coast and from existing measures and additional reductions from new measures implemented before 2027 for attainment of the 2008 ozone NAAQS by 2031 in the South Coast.

The control strategy in the 2016 South Coast Ozone SIP for attainment of the 1997 ozone NAAQS by 2023 in the South Coast relies on emissions reductions from already-adopted measures, commitments by the District to certain regulatory and nonregulatory initiatives and aggregate emissions reductions, and commitments by CARB to certain regulatory and nonregulatory initiatives and aggregate emissions reductions. Already-adopted measures are expected to achieve approximately 66 percent of the NO_X reductions needed from the 2012 base year for the South Coast to attain the NAAQS in 2023. To address the remaining emissions reductions, the 2016 South Coast Ozone SIP includes District and CARB aggregate commitments to achieve additional emissions reductions by 2023, as shown in tables 2, 3, and 4 below. Table 2 summarizes the additional reduction commitments in the 2016 South Coast Ozone SIP. Tables 3 and 4 show the District and CARB measures included in the aggregate commitments in Table 2. The emissions reductions for individual measures shown in tables 3 and 4 are not intended to be enforceable; they are estimates prepared by the District and CARB to show how they expect at the present time to achieve the aggregate emissions reductions for 2023. The EPA's June 17, 2019 proposed approval of the 2016 South Coast Ozone SIP provides an extensive discussion of the control strategy and attainment demonstrations for the upwind South Coast to attain the 1997 and 2008 ozone NAAQS.[87]

TABLE 2—DISTRICT AND CARB AGGREGATE EMISSION REDUCTION COMMITMENTS FOR 2023 IN 2016 SOUTH COAST OZONE PLAN

[Summer planning inventory, tpd] [a]

Plan	Year 2023	
	NO_X	VOC
SCAQMD [b]	23	6
CARB [c]	113	50–51
Total	136	56–57

[a] Rounded to whole number.
[b] 2016 AQMP, tables 4–9, 4–10 and 4–11. Reductions are from the 2012 base year.
[c] 2016 State Strategy, Table 4, and CARB Resolution 17–7 (March 23, 2017). Reductions are from the 2012 base year.

TABLE 3—DISTRICT MEASURES WITH REDUCTIONS BY 2023 IN 2016 AQMP

No.	Title	Adoption	Implementation period	NO_X Emission Reductions (tpd)	VOC emission reductions (tpd)
CMB–01	Transition to Zero and Near-Zero Emission Technologies for Stationary Sources.	2018	Ongoing	2.5	[a] 1.2
CMB–02	Emission Reductions from Replacement with Zero or Near-Zero NO_X Appliances in Commercial and Residential Applications	2018	2020–2031	1.1	
CMB–03	Emission Reductions from Non-Refinery Flares	2018	2020	1.4	[a] 0.4
CMB–04	Emission Reductions from Restaurant Burners and Residential Cooking.	2018	2022	0.8	
BCM–10	Emission Reductions from Greenwaste Composting	2019	2020		1.5
FUG–01	Improved Leak Detection and Repair	2019	2022		2.0
CTS–01	Further Emission Reductions from Coatings, Solvents, Adhesives, and Sealants.	2017/2021	2020–2031		1.0
ECC–02	Co-Benefits from Existing Residential and Commercial Building Energy Efficiency Measures	2018	Ongoing	0.3	[a] 0.1
ECC–03	Additional Enhancements in Reducing Existing Residential Building Energy Use.	2018	Ongoing	1.2	[a] 0.2
Stationary Sources Totals				7.3	6.4

[86] 2016 AQMP, Appendix V, pages V–5–36 to V–5–41.

[87] 84 FR 28132.

TABLE 3—DISTRICT MEASURES WITH REDUCTIONS BY 2023 IN 2016 AQMP—Continued

No.	Title	Adoption	Implementation period	NO_X Emission Reductions (tpd)	VOC emission reductions (tpd)
MOB–10	Extension of the SOON[b] Provision for Construction/Industrial Equipment.	NA	Ongoing	1.9	
MOB–11	Extended Exchange Program	NA	Ongoing	2.9	
MOB–14	Emission Reductions from Incentive Programs	NA	2016–2024	11	
Mobile Sources Totals				15.8	
Stationary and Mobile Sources Totals				23.1	6.4

Notes:
[a] Corresponding VOC reductions from other measures.
[b] Surplus Off-Road Opt-In for NO_X Program
The sum of the emissions values may not equal the total shown due to rounding of the numbers.
Source: 2016 AQMP, tables 4–2, 4–4, 4–9, 4–10 and 4–11.

TABLE 4—MEASURES WITH REDUCTIONS BY 2023 IN CARB'S 2016 STATE STRATEGY

Title	Adoption	Implementation		NO_X Emission Reductions (tpd)	VOC emission reductions (tpd)
		Time frame	Agency		
On-Road Light-Duty:					
Further Deployment of Cleaner Technologies[a].	ongoing	2016	CARB, SCAQMD, EPA	7	16
On-Road Heavy-Duty:					
Lower In-Use Emission Performance Level	2017–2020	2018 +	CARB	NYQ	<0.1
Innovative Clean Transit	2017	2018	CARB	<0.1	<0.1
Last Mile Delivery	2018	2020	CARB	<0.1	<0.1
Incentive Funding to Achieve Further Emission Reductions from On-Road Heavy Duty Vehicles[b].	ongoing	2016	CARB, SCAQMD	3	0.4
Further Deployment of Cleaner Technologies[a].	ongoing	2016	CARB, SCAQMD, EPA	34	4
Aircraft:					
Further Deployment of Cleaner Technologies[a].	ongoing	2016	CARB, SCAQMD, EPA	9	NYQ
Locomotives:					
More Stringent National Locomotive Emission Standards.	2017	2023	EPA	<0.1	<0.1
Further Deployment of Cleaner Technologies[a].	ongoing	2016	CARB, SCAQMD, EPA	7	0.3
Ocean-Going Vessels:					
At-Berth Regulation Amendments	2017–2018	2023	CARB	0.3	<0.1
Further Deployment of Cleaner Technologies[a].	ongoing	2016	CARB, SCAQMD, EPA	30	NYQ
Off-Road Equipment:					
Zero-Emission Airport Ground Support Equipment.	2018	2023	CARB	<0.1	<0.1
Small Off-Road Engines	2018–2020	2022	CARB	0.7	7
Low-Emission Diesel Requirement	by 2020	2023	CARB	0.3	NYQ
Further Deployment of Cleaner Technologies[a].	ongoing	2016	CARB, SCAQMD, EPA	21	21
Consumer Products:					
Consumer Products Program	2019–2021	2020 +	CARB	0	1–2
Total Emission Reductions				113	50–51

Notes:
[a] CARB requested the EPA approve the "Further Deployment of Cleaner Technologies" measures under the provisions of section 182(e)(5) of the CAA. In today's action we also refer to these as new technology measures.
[b] On March 22, 2018, CARB adopted the "South Coast On-Road Heavy-Duty Vehicle Incentive Measure." On April 25, 2019, the EPA proposed to approve the measure as achieving 1 tpd of NO_X reductions in 2023. See 84 FR 17365.
NYQ means not yet quantified.
The sum of the emissions values may not equal the total shown due to rounding of the numbers.
Source: 2016 State Strategy, Table 4; Attachment A to CARB Resolution 17–7 (March 23, 2017).

c. Attainment Demonstration

Chapter 7 of the 2016 AQMP includes a section entitled "Ozone Attainment Demonstration and Projections," which describes the Coachella Valley's progress toward attaining the 1997, 2008, and 2015 ozone standards.[88] For the 2008 ozone NAAQS, the 2016 AQMP summarizes the District's modeling for the area, and concludes that the measures included in the control strategy (including CARB

[88] 2016 AQMP, 7–35 to 7–40.

commitments) will result in the area attaining the standards no later than 2026. The WOE discussion in Appendix C of CARB's Staff Report for the 2016 AQMP provides additional discussion of air quality trends and projections in the Coachella Valley and determines that the area is on track to attain the 2008 ozone NAAQS by 2026.

3. The EPA's Review of the State's Submission

a. Photochemical Modeling

As discussed above in Section III.A of this notice, we are proposing to approve the base year emissions inventory and to find that the future year emissions projections in the 2016 AQMP reflect appropriate calculation methods and that the latest planning assumptions are properly supported by SIP-approved stationary and mobile source measures. In the discussion below, we address our findings for the modeling submitted with the 2016 Coachella Valley Ozone SIP. Because of the importance of ozone transport from the South Coast to attainment in the Coachella Valley, and the close interactions of the modeling for each area, we have considered the modeling for both areas. Similar and additional discussion for the South Coast can be found in our June 17, 2019 proposed action on the 2016 South Coast Ozone SIP.[89]

Based on our review of Appendix V of the 2016 AQMP, the EPA finds that the photochemical modeling is adequate for purposes of supporting the attainment demonstration.[90] First, we note the extensive discussion of modeling procedures, tests, and performance analyses called for in the Modeling Protocol (*i.e.,* Chapter 2 of Appendix V of the 2016 AQMP) and the good model performance. Second, we find the WRF meteorological model results and performance statistics, including hourly time series graphs of wind speed, direction, and temperature for both the South Coast and the Coachella Valley, to be satisfactory and consistent with our Modeling Guidance.[91] Performance was evaluated for each month in each zone for the entire year of 2012.[92] Diurnal variation of temperature, humidity and surface wind are well represented by WRF. Geographically, winds are predicted most accurately at the inland urban receptor sites. Accurate wind predictions in this region of elevated ozone concentrations is one of the most critical factors to simulate chemical transport to the Coachella Valley. Overall, the daily WRF simulation for 2012 provided representative meteorological fields that characterized the observed conditions well.

The model performance statistics for ozone are described in Chapter 5 of Appendix V and are based on the statistical evaluation recommended in the Modeling Guidance. Model performance was provided for 8-hour daily maximum ozone for Coachella Valley as well as other areas in the Southern California modeling domain.[93] A geographical bias is shown in the time series, with over-prediction in coastal areas, and under-prediction in the inland areas, including Coachella Valley.[94] The 2016 AQMP also presents ozone frequency distributions, scatter plots, and plots of bias against concentration. The scatter and density scatter plots show low bias at high concentrations, and higher bias at low concentrations. The low bias at high concentrations is important because it reflects the model's capability to predict high concentrations, in particular, the top 10 days that form the basis for the RRF calculation. The supplemental hourly time series show generally good performance, though many individual daily ozone peaks are underpredicted. As noted above, however, the underprediction of absolute ozone concentrations does not mean that future concentrations will be underestimated. In addition, the WOE analysis presented in Appendix C of CARB's Staff Report for the 2016 Coachella Valley Ozone SIP provides additional information with respect to the sensitivity to emissions changes and further supports the model performance. We are proposing to find the air quality modeling adequate to support the attainment demonstration for the 2008 ozone NAAQS, based on reasonable meteorological and ozone modeling performance, and supported by the weight of evidence analyses. For additional information, please see section VI of the TSD for this action.

b. Control Strategy

The Coachella Valley control strategy relies primarily on previously adopted and future emissions reductions detailed in the 2016 South Coast Ozone SIP. As described in Section III.D.2.b above, a significant portion of the emissions reductions needed to attain the 1997 ozone NAAQS in the South Coast by 2023 will be obtained through previously adopted measures in the SIP, and the balance of the reductions needed for attainment will result from enforceable commitments to take certain specific actions within prescribed periods and to achieve aggregate tonnage reductions of VOC or NO_X by specific years. The aggregate commitments provide the remaining additional upwind reductions necessary for the Coachella Valley to attain the 2008 ozone NAAQS by 2026. In our October 1, 2019 approval of the 2016 South Coast Ozone SIP, the EPA approved the control strategy, including CARB's and the District's aggregate commitments, for the South Coast to attain the 1997 ozone NAAQS.[95] For the reasons described in that action, and based on the District's demonstration specific to the Coachella Valley described above, we propose to find the District's control strategy acceptable for purposes of attaining the 2008 ozone NAAQS in the Coachella Valley. For additional information, please see the TSD for this action.

c. Attainment Demonstration

Based on our proposed determinations that the photochemical modeling and control strategy are acceptable, we propose to approve the attainment demonstration for the 2008 ozone NAAQS in the 2016 Coachella Valley Ozone SIP as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108.

E. Rate of Progress Plan and Reasonable Further Progress Demonstration

1. Statutory and Regulatory Requirements

Requirements for RFP for ozone nonattainment areas are specified in CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B). Under CAA section 171(1), RFP is defined as meaning such annual incremental reductions in emissions of the relevant air pollutant as are required under part D (''Plan Requirements for Nonattainment Areas'') of the CAA or as may reasonably be required by the EPA

[89] 84 FR 28132.

[90] The EPA's review of the modeling and attainment demonstration is discussed in greater detail in section VI of the TSD (''Modeling and Attainment Demonstration'').

[91] Modeling Guidance, 30.

[92] Temperature, water vapor mixing ratio, and wind speed were evaluated in terms of normalized gross bias and normalized gross error.

[93] 2016 AQMP Appendix V, Table V–5–8. These zones are represented by the following ozone monitoring sites: ''Coastal'' (Costa Mesa, LAX, Long Beach, Mission Viejo, West Los Angeles); ''Urban Source'' (Anaheim, Central Los Angeles, Compton, La Habra, Pico Rivera, Pomona); ''San Fernando'' (Reseda, Santa Clarita, Burbank); ''Foothills'' (Azusa, Glendora, Pasadena); ''Urban Receptor'' (Crestline, Fontana, Lake Elsinore, Mira Loma, Redlands, Rubidoux, San Bernardino, Upland); and ''Coachella Valley'' (Palm Springs and Indio).

[94] The model performance varied by zone, with over-prediction in the ''Coastal'' zone and under-prediction in the ''San Fernando,'' and ''Foothills'' zones. The model ozone predictions in the ''Urban Receptor'' zone agree reasonably well with the measurements.

[95] See 84 FR 52005.

for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. CAA section 182(b)(1) specifically requires that ozone nonattainment areas classified as Moderate or above demonstrate a 15 percent reduction in VOC between the years of 1990 and 1996. The EPA has typically referred to section 182(b)(1) as the rate of progress (ROP) requirement. For ozone nonattainment areas classified as Serious or higher, section 182(c)(2)(B) requires VOC reductions of at least 3 percent of baseline emissions per year, averaged over each consecutive 3-year period, beginning 6 years after the baseline year until the attainment date. Under CAA section 182(c)(2)(C), a state may substitute NO_X emissions reductions for VOC emissions reductions. Additionally, CAA section 182(c)(2)(B)(ii) allows an amount less than 3 percent of such baseline emissions each year if a state demonstrates to the EPA that its plan includes all measures that can feasibly be implemented in the area in light of technological achievability.

In the 2008 Ozone SRR, the EPA provides that areas classified Moderate or higher will have met the ROP requirements of CAA section 182(b)(1) if the area has a fully approved 15 percent ROP plan for the 1-hour or 1997 ozone NAAQS.[96] For such areas, the EPA interprets the RFP requirements of CAA section 172(c)(2) to require areas classified as Moderate to provide a 15 percent emissions reduction of ozone precursors within 6 years of the baseline year. Areas classified as Serious or higher must meet the RFP requirements of CAA section 182(c)(2)(B) by providing an 18 percent reduction of ozone precursors in the first 6-year period, and an average ozone precursor emissions reduction of 3 percent per year for all remaining 3-year periods thereafter.[97] The 2008 Ozone SRR allows substitution of NO_X reductions for VOC reductions to meet the CAA section 172(c)(2) and 182(c)(2)(B) RFP requirements.[98]

Except as specifically provided in CAA section 182(b)(1)(C), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP-creditable measures that occur after the baseline year are creditable for purposes of demonstrating that the RFP targets are met. Because the EPA has determined that the passage of time has caused the effect of certain exclusions to be de minimis, the RFP demonstration is no longer required to calculate and specifically exclude reductions from measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; regulations concerning Reid vapor pressure promulgated by November 15, 1990; measures to correct previous RACT requirements; and measures required to correct previous inspection and maintenance (I/M) programs.[99]

The 2008 Ozone SRR requires the RFP baseline year to be the most recent calendar year for which a complete triennial inventory was required to be submitted to the EPA. For the purposes of developing RFP demonstrations for the 2008 ozone NAAQS, the applicable triennial inventory year is 2011. As discussed previously, the 2008 Ozone SRR provided states with the opportunity to use an alternative baseline year for RFP,[100] but that provision of the 2008 Ozone SRR was vacated by the D.C. Circuit in the *South Coast II* decision.

2. Summary of the State's Submission

In response to the *South Coast II* decision, CARB developed the 2018 SIP Update to revise the RFP demonstrations in previously submitted ozone SIPs, including the Coachella Valley RFP demonstration in the 2016 AQMP. The 2018 SIP Update includes updated emissions estimates for the 2011 RFP baseline year, subsequent milestone years, and the attainment year.[101] To develop the 2011 RFP baseline inventory, CARB relied on actual emissions reported from industrial point sources for year 2011 and backcast emissions from smaller stationary sources and area sources from 2012 to 2011 using the same growth and control factors as was used for the 2016 AQMP. To develop the emissions inventories for the RFP milestone years (*i.e.,* 2017, 2020, 2023) and attainment year (2026), CARB also relied upon the same growth and control factors as the 2016 AQMP.[102] For both sets of baseline emissions inventories (those in the 2016 AQMP and those in the 2018 SIP Update), emissions estimates reflect District rules adopted through December 2015 and CARB rules adopted through November 2015.

The updated RFP demonstration for Coachella Valley for the 2008 ozone NAAQS is shown in Table 5. The updated RFP demonstration calculates future year VOC targets from the 2011 baseline, consistent with CAA 182(c)(2)(B)(i), which requires reductions of ''at least 3 percent of baseline emissions each year,'' and it substitutes NO_X reductions for VOC reductions beginning in milestone year 2020 to meet VOC emission targets.[103] For the Coachella Valley, CARB concludes that the RFP demonstration meets the applicable requirements for each milestone year as well as the attainment year.

TABLE 5—RFP DEMONSTRATION FOR THE COACHELLA VALLEY FOR THE 2008 OZONE NAAQS

[Summer planning inventory, tpd or percent]

	VOC				
	2011	2017	2020	2023	2026
Baseline VOC	16.9	14.8	14.5	14.7	15.1
Required change since 2011 (VOC or NO_X), %		18%	27%	36%	45%
Required reductions since 2011		3.0	4.6	6.1	7.6
Target VOC level		13.9	12.3	10.8	9.3
Apparent shortfall in VOC		−0.9	−2.2	−3.9	−5.8
Apparent shortfall in VOC, %		−5.6%	−13.0%	−23.0%	−34.1%
VOC shortfall previously provided by NO_X substitution, %		0.0%	5.6%	13.0%	23.0%
Actual VOC shortfall, %		−5.6%	−7.5%	−10.0%	−11.1%

[96] 70 FR 12264, 12271 (March 6, 2015).

[97] Id.

[98] Id.; 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B).

[99] 40 CFR 51.1110(a)(7).

[100] 40 CFR 51.1110(b).

[101] 2018 SIP Update, RFP demonstration, section IX–B, 44 and 45.

[102] Documentation for the Coachella Valley RFP baseline and milestone emissions inventories is found in the 2018 SIP Update on pages 4–5, 44–45, and Appendix A, pages A–23 to A–26.

[103] NO_X substitution is permitted under EPA regulations. See 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B); and 70 FR 12264, at 12271 (March 6, 2015).

TABLE 5—RFP DEMONSTRATION FOR THE COACHELLA VALLEY FOR THE 2008 OZONE NAAQS—Continued

[Summer planning inventory, tpd or percent]

	VOC				
	2011	2017	2020	2023	2026
	NO_X				
Baseline NO_X	29.8	18.1	14.9	10.2	9.1
Change in NO_X since 2011		11.8	15.0	19.6	20.7
Change in NO_X since 2011, %		39.4%	50.2%	65.8%	69.4%
NO_X reductions used for VOC substitution through last milestone year, %.		0%	5.6%	13.0%	23.0%
NO_X reductions since 2011 available for VOC substitution in this milestone year, %.		39.4%	44.6%	52.8%	46.4%
NO_X reductions since 2011 used for VOC substitution in this milestone year, %.		5.6%	7.5%	10.0%	11.1%
NO_X reductions since 2011 surplus after meeting VOC substitution needs in this milestone year, %.		33.9%	37.2%	42.9%	35.3%
Total shortfall for RFP		0%	0%	0%	0%
RFP met?		Yes	Yes	Yes	Yes

Source: Table VII–2 of the 2018 SIP Update.

3. The EPA's Review of the State's Submission

In 2017, the EPA approved a 15 percent ROP plan for the Coachella Valley.[104] As a result, the District and CARB have met the ROP requirements of CAA section 182(b)(1) for the Coachella Valley and do not need to demonstrate another 15 percent reduction in VOC for this area.

Based on our review of the emissions inventory documentation in the 2016 AQMP and 2018 SIP Update, we find that CARB and the District have used the most recent planning and activity assumptions, emissions models, and methodologies in developing the RFP baseline and milestone year emissions inventories. We have also reviewed the calculations in Table VII–2 of the 2018 SIP Update (presented in Table 2 above) and find that the District and CARB have used an appropriate calculation method to demonstrate RFP. For these reasons, we have determined that the 2016 Coachella Valley Ozone SIP demonstrates RFP, in each milestone year and the attainment year, consistent with applicable CAA requirements and EPA guidance. We therefore propose to approve the RFP demonstrations for the Coachella Valley for the 2008 ozone NAAQS under sections 172(c)(2), 182(b)(1) and 182(c)(2)(B) of the CAA and 40 CFR 51.1110(a)(2)(ii).

[104] 82 FR 26854 (June 12, 2017).

F. Transportation Control Strategies and Measures to Offset Emissions Increases From Vehicle Miles Traveled

1. Stationary and Regulatory Requirements

Section 182(d)(1)(A) of the Act requires, in relevant part, a state to submit, for each area classified as Serious or above, a SIP revision that ''identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips in such area.'' [105] Herein, we use ''VMT'' to refer to vehicle miles traveled and refer to the related SIP requirement as the ''VMT emissions offset requirement.'' In addition, we refer to the SIP revision intended to demonstrate compliance with the VMT emissions offset requirement as the ''VMT emissions offset demonstration.''

In *Association of Irritated Residents* v. *EPA,* the Ninth Circuit ruled that additional transportation control measures are required whenever vehicle emissions are projected to be higher than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing.[106] In response to the court's decision, in August 2012, the EPA issued a memorandum titled ''Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled'' (''August 2012 Guidance'').[107]

The August 2012 Guidance discusses the meaning of ''transportation control strategies'' (TCS) and ''transportation control measures'' (TCM) and recommends that both TCSs and TCMs be included in the calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. Generally, TCS is a broad term that encompasses many types of controls (including, for example, motor vehicle emissions limitations, I/M programs, alternative fuel programs, other technology-based measures, and TCMs) that would fit within the regulatory definition of ''control

[105] CAA section 182(d)(1)(A) includes three separate elements. In short, under section 182(d)(1)(A), states are required to adopt transportation control strategies and measures to offset growth in emissions from growth in VMT, and, as necessary, in combination with other emission reduction requirements, to demonstrate RFP and attainment. For more information on the EPA's interpretation of the three elements of section 182(d)(1)(A). See 77 FR 58067 58068 (September 19, 2012) (proposed withdrawal of approval of South Coast VMT emissions offset demonstrations). In section III.F of this document, we are addressing the first element of CAA section 182(d)(1)(A) (*i.e.,* the VMT emissions offset requirement). In sections III.E and D of this document, we are proposing to approve the RFP and attainment demonstrations, respectively, for the 2008 ozone NAAQS in the Coachella Valley, and compliance with the second and third elements of section 182(d)(1)(A) is predicated on final approval of the RFP and attainment demonstrations.

[106] See *Association of Irritated Residents* v. *EPA,* 632 F.3d. 584, at 596–597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''*Association of Irritated Residents*'').

[107] Memorandum dated August 30, 2012, Karl Simon, Director, Transportation and Climate Division, Office of Transportation and Air Quality, to Carl Edland, Director, Multimedia Planning and Permitting Division, EPA Region 6, and Deborah Jordan, Director, Air Division, EPA Region 9.

strategy.'' [108] A TCM is defined at 40 CFR 51.100(r) as ''any measure that is directed toward reducing emissions of air pollutants from transportation sources,'' including, but not limited to, those listed in section 108(f) of the Clean Air Act. TCMs generally refer to programs intended to reduce VMT, number of vehicle trips, or traffic congestion, such as programs for improved public transit, designation of certain lanes for passenger buses and high-occupancy vehicles, and trip reduction ordinances.

The August 2012 Guidance explains how states may demonstrate that the VMT emissions offset requirement is satisfied in conformance with the Court's ruling in *Association of Irritated Residents.* Under the August 2012 Guidance, states would develop one emissions inventory for the base year and three different emissions inventory scenarios for the attainment year. For the attainment year, the state would present three emissions estimates, two of which would represent hypothetical emissions scenarios that would provide the basis to identify the ''growth in emissions'' due solely to the growth in VMT, and one that would represent projected actual motor vehicle emissions after fully accounting for projected VMT growth and offsetting emissions reductions obtained by all creditable TCSs and TCMs. See the August 2012 Guidance for specific details on how states might conduct the calculations.

The base year on-road VOC emissions should be calculated using VMT in that year, and it should reflect all enforceable TCSs and TCMs in place in the base year. This would include vehicle emissions standards, state and local control programs, such as I/M programs or fuel rules, and any additional implemented TCSs and TCMs that were already required by or credited in the SIP as of that base year.

The first of the emissions calculations for the attainment year would be based on the projected VMT and trips for that year and assume that no new TCSs or TCMs beyond those already credited in the base year inventory have been put in place since the base year. This calculation demonstrates how emissions would hypothetically change if no new TCSs or TCMs were implemented, and VMT and trips were allowed to grow at the projected rate from the base year. This estimate would show the potential for an increase in emissions due solely to growth in VMT and trips. This represents a ''no action'' scenario. Emissions in the attainment year in this scenario may be lower than those in the base year due to the fleet that was on the road in the base year gradually being replaced through fleet turnover; however, provided VMT and/or numbers of vehicle trips will in fact increase by the attainment year, they would still likely be higher than they would have been assuming VMT had held constant.

The second of the attainment year's emissions calculations would assume that no new TCSs or TCMs beyond those already credited have been put in place since the base year, but it would also assume that there was no growth in VMT and trips between the base year and attainment year. This estimate reflects the hypothetical emissions level that would have occurred if no further TCMs or TCSs had been put in place and if VMT and trip levels had held constant since the base year. Like the ''no action'' attainment year estimate described above, emissions in the attainment year may be lower than those in the base year due to the fleet that was on the road in the base year gradually being replaced by cleaner vehicles through fleet turnover, but in this case they would not be influenced by any growth in VMT or trips. This emissions estimate would reflect a ceiling on the attainment emissions that should be allowed to occur under the statute as interpreted by the court in *Association of Irritated Residents* because it shows what would happen under a scenario in which no offsetting TCSs or TCMs have yet been put in place and VMT and trips are held constant during the period from the area's base year to its attainment year. This represents a ''VMT offset ceiling'' scenario. These two hypothetical status quo estimates are necessary steps in identifying the target level of emissions from which states would determine whether further TCMs or TCSs, beyond those that have been adopted and implemented in reality, would need to be adopted and implemented in order to fully offset any increase in emissions due solely to VMT and trips identified in the ''no action'' scenario.

Finally, the state would present the emissions that are actually expected to occur in the area's attainment year after taking into account reductions from all enforceable TCSs and TCMs. This estimate would be based on the VMT and trip levels expected to occur in the attainment year (*i.e.,* the VMT and trip levels from the first estimate) and all of the TCSs and TCMs expected to be in place and for which the SIP will take credit in the area's attainment year, including any TCMs and TCSs put in place since the base year. This represents the ''projected actual'' attainment year scenario. If this emissions estimate is less than or equal to the emissions ceiling that was established in the second of the attainment year calculations, the TCSs or TCMs for the attainment year would be sufficient to fully offset the identified hypothetical growth in emissions.

If, instead, the estimated projected actual attainment year emissions are still greater than the ceiling which was established in the second of the attainment year emissions calculations, even after accounting for post-baseline year TCSs and TCMs, the state would need to adopt and implement additional TCSs or TCMs to further offset the growth in emissions. The additional TCSs or TCMs would need to bring the actual emissions down to at least the VMT offset ceiling estimated in the second of the attainment year calculations, in order to meet the VMT offset requirement of section 182(d)(1)(A) as interpreted by the Court.

2. Summary of State's Submission

CARB prepared the VMT emissions offset demonstration for the Coachella Valley for the 2008 ozone NAAQS, and the District included it in Chapter 7 of the 2016 AQMP.[109] In addition to the VMT emissions offset demonstration, Appendix VI–E of the 2016 AQMP includes two attachments—one listing the TCSs adopted by CARB since 1990 and another listing the TCMs developed by SCAG (as of September 2014) in the South Coast. As described above in section III.C.2.b, none of these TCMs apply in the Coachella Valley.[110]

For the VMT emissions offset demonstration, CARB used EMFAC2014, the latest EPA-approved motor vehicle emissions model for California available at the time the 2016 AQMP was developed.[111] The EMFAC2014 model estimates the on-road emissions from two combustion processes (*i.e.,* running exhaust and start exhaust) and four evaporative processes (*i.e.,* hot soak, running losses, diurnal losses, and resting losses). The EMFAC2014 model combines trip-based VMT data from the regional transportation planning agency (*i.e.,* SCAG), starts data based on household travel surveys, and vehicle population data from the California Department of Motor Vehicles. These sets of data are

[108] See, *e.g.,* 40 CFR 51.100(n).

[109] 2016 AQMP, 7–32.

[110] Appendix VI–E, Attachments VI–E–1 and 2.

[111] On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. See 84 FR 41717.

combined with corresponding emission rates to calculate emissions.

Emissions from running exhaust, start exhaust, hot soak, and running losses are a function of how much a vehicle is driven. Emissions from these processes are thus directly related to VMT and vehicle trips, and CARB included these emissions in the calculations that provide the basis for the Coachella Valley VMT emissions offset demonstration. CARB did not include emissions from resting loss and diurnal loss processes in the analysis because such emissions are related to vehicle population, not to VMT or vehicle trips, and thus are not part of ''any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area'' under CAA section 182(d)(1)(A).

The Coachella Valley VMT emissions offset demonstration uses a 2012 base year. The base year for VMT emissions offset demonstration purposes should generally be the same base year used for nonattainment planning purposes. In section III.A of this document, the EPA is proposing to approve the 2012 base year inventory for the Coachella Valley for the purposes of the 2008 ozone NAAQS, and thus, CARB's selection of 2012 as the base year for the Coachella Valley VMT emissions offset demonstration for the 2008 ozone NAAQS is appropriate.

The Coachella Valley VMT emissions offset demonstration also includes the previously described three different attainment year scenarios (*i.e.,* no action, VMT offset ceiling, and projected actual). The 2016 AQMP provides a demonstration of attainment of the 2008 ozone NAAQS in the Coachella Valley by the applicable attainment date, based on the controlled 2026 emissions inventory. As described in section III.D of this document, the EPA is proposing to approve the attainment demonstration for the 2008 ozone NAAQS for the Coachella Valley, and thus, we find CARB's selection of year 2026 as the attainment year for the VMT emissions offset demonstration for the 2008 ozone NAAQS to be acceptable.

Table 6 summarizes the relevant distinguishing parameters for each of the emissions scenarios and shows CARB's corresponding VOC emissions estimates for the demonstration for the 2008 ozone NAAQS.

TABLE 6—VMT EMISSIONS OFFSET INVENTORY SCENARIOS AND RESULTS FOR 2008 OZONE NAAQS

Scenario	VMT		Starts		Controls	VOC Emissions
	Year	1,000/day	Year	1,000/day	Year	tpd
Base Year	2012	11,403	2012	2,007	2012	4.8
No Action	2026	14,977	2026	2,738	2012	3.1
VMT Offset Ceiling	2012	11,403	2012	2,007	2012	2.5
Projected Actual	2026	14,977	2026	2,738	2026	2.0

Source: 2016 AQMP, Tables 7–9 and 7–10.

For the base year scenario, CARB ran the EMFAC2014 model for the 2012 base year using VMT and starts data corresponding to that year. As shown in Table 6, CARB estimates the Coachella Valley VOC emissions at 4.8 tpd in 2012.

For the ''no action'' scenario, CARB first identified the on-road motor vehicle control programs (*i.e.,* TCSs [112]) put in place since the base year and incorporated into EMFAC2014, and then ran EMFAC2014 with the VMT and starts data corresponding to the 2026 attainment year without the emissions reductions from the on-road motor vehicle control programs put in place after the base year. Thus, the no action scenario reflects the hypothetical VOC emissions in the attainment year if CARB had not put in place any additional TCSs after 2012. As shown in Table 6, CARB estimates the ''no action'' Coachella Valley VOC emissions at 3.1 tpd in 2026.

For the ''VMT offset ceiling'' scenario, CARB ran the EMFAC2014 model for the attainment year but with VMT and starts data corresponding to base year values. Like the no action scenario, the EMFAC2014 model was adjusted to reflect the VOC emissions levels in the attainment years without the benefits of the post-base-year on-road motor vehicle control programs. Thus, the VMT offset ceiling scenario reflects hypothetical VOC emissions in the Coachella Valley if CARB had not put in place any TCSs after the base year and if there had been no growth in VMT or vehicle trips between the base year and the attainment year.

The hypothetical growth in emissions due to growth in VMT and trips can be determined from the difference between the VOC emissions estimates under the ''no action'' scenario and the corresponding estimates under the ''VMT offset ceiling'' scenario. Based on the values in Table 6, the hypothetical growth in emissions due to growth in VMT and trips in the Coachella Valley would have been 0.6 tpd (*i.e.,* 3.1 tpd minus 2.5 tpd). This hypothetical difference establishes the level of VMT growth-caused emissions that need to be offset by the combination of post-baseline year TCSs and any necessary additional TCSs.

For the ''projected actual'' scenario calculation, CARB ran the EMFAC2014 model for the attainment year with VMT and starts data at attainment year values and with the full benefits of the relevant post-baseline year motor vehicle control programs. For this scenario, CARB included the emissions benefits from TCSs put in place since the base year. Between 2015 and 2026, VOC emissions from light-duty passenger vehicles in the Coachella Valley are projected to decline an additional 54 percent.[113] The most significant measures reducing VOC emissions during the 2012 to 2026 timeframe include the Advanced Clean Cars program, Zero Emission Vehicle requirements, and more stringent on-board diagnostics requirements.[114]

[112] As discussed in section III.C.2.b and C.3 of today's notice, because of the significant influence of pollutant transport from the South Coast Air Basin on ozone conditions in the Coachella Valley, no TCMs are reasonably available for implementation in the Coachella Valley for the purposes of meeting the RACM requirement and neither the District nor CARB rely on implementation of any TCMs in the Coachella Valley to demonstrate implementation of RACM in the 2016 Coachella Valley Ozone SIP. Similarly, no TCMs are included in the VMT emissions offset demonstration for the Coachella Valley.

[113] Staff Report, ARB Review of the 2016 Air Quality Management Plan for the South Coast Air Basin and Coachella Valley, Release Date: March 7, 2017, Appendix C, Coachella Valley Weight of Evidence, C–9.

[114] Attachment V–E–1 to Appendix VI of the 2016 AQMP includes a list of the State's transportation control strategies adopted by CARB since 1990. Also see EPA final action on CARB mobile source SIP submittals at 81 FR 39424 (June 16, 2016), 82 FR 14446 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

As shown in Table 6, the projected actual attainment-year VOC emissions are 2.0 tpd. CARB compared this value against the corresponding VMT offset ceiling value to determine whether additional TCSs or TCMs would need to be adopted and implemented in order to offset any increase in emissions due solely to VMT and trips. Because the projected actual emissions are less than the corresponding VMT offset ceiling emissions, CARB concluded that the demonstration shows compliance with the VMT emissions offset requirement and that the adopted TCSs are sufficient to offset the growth in emissions from the growth in VMT and vehicle trips in the Coachella Valley for the 2008 ozone NAAQS.

3. The EPA's Review of the State's Submission

Based on our review of Coachella Valley VMT emissions offset demonstration in Chapter 7 of the 2016 AQMP, we find CARB's analysis to be consistent with our August 2012 Guidance and consistent with the emissions and vehicle activity estimates provided by CARB in support of the 2016 AQMP. We agree that CARB and SCAG have adopted sufficient TCSs to offset the growth in emissions from growth in VMT and vehicle trips in the Coachella Valley for the purposes of the 2008 ozone NAAQS. Therefore, we propose to approve the Coachella Valley VMT emissions offset demonstration element of the Coachella Valley Ozone SIP as meeting the requirements of CAA section 182(d)(1)(A).

G. Contingency Measures

1. Statutory and Regulatory Requirements

Under the CAA, SIPs for 8-hour ozone nonattainment areas classified under subpart 2 as Moderate or above must include contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event an area fails to make RFP or to attain the NAAQS by the attainment date. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.[115]

Neither the CAA nor the EPA's implementing regulations establish a specific level of emissions reductions that implementation of contingency measures must achieve, but the EPA's 2008 Ozone SRR reiterates the EPA's policy that contingency measures should provide for emissions reductions approximately equivalent to one year's worth progress, amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.[116]

It has been the EPA's longstanding interpretation of CAA section 172(c)(9) that states may meet the contingency measure requirement by relying on federal measures (*e.g.,* federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and local measures already scheduled for implementation that provide emissions reductions in excess of those needed to provide for RFP or expeditious attainment. The key is that the Act requires that contingency measures provide for additional emissions reductions that are not relied on for RFP or attainment and that are not included in the RFP or attainment demonstrations as meeting part or all of the contingency measure requirements. The purpose of contingency measures is to provide continued emissions reductions while a plan is being revised to meet the missed milestone or attainment date.

The EPA has approved numerous SIPs under this interpretation—*i.e.,* SIPs that use as contingency measures one or more federal or local measures that are in place and provide reductions in excess of the reductions required by the attainment demonstration or RFP plan,[117] and there is case law supporting the EPA's interpretation in this regard.[118] However, in *Bahr* v. *EPA,* the Ninth Circuit rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures.[119] The Ninth Circuit concluded that contingency measures must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before.[120] Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on early-implemented measures to comply with the contingency measure requirements under CAA section 172(c)(9) and 182(c)(9).[121]

2. Summary of the State's Submission

The District and CARB had largely completed preparation of the 2016 AQMP prior to the *Bahr* v. *EPA* decision, and thus, it relies solely upon surplus emissions reductions from already implemented control measures in the milestone and attainment years to demonstrate compliance with the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9).[122]

In the 2018 SIP Update, CARB revised the RFP demonstration for the 2008 ozone NAAQS for several districts, including the Coachella Valley, and recalculated the extent of surplus emission reductions (*i.e.,* surplus to meeting the RFP milestone requirement for a given milestone year) in the milestone years. In light of the *Bahr* v. *EPA* decision, however, the 2018 SIP Update does not rely on the surplus or incremental emissions reductions to comply with the contingency measures requirements of sections 172(c)(9) and 182(c)(9) but, to provide context in which to review contingency measures for the 2008 ozone NAAQS, the 2018 SIP Update documents the extent to which future baseline emissions would provide surplus emissions reductions beyond those required to meet applicable RFP milestones. More specifically, the 2018 SIP Update identifies one year's worth of RFP as approximately 0.5 tpd of VOC and estimates surplus NO_X reductions as ranging from approximately 10.1 tpd to 12.8 tpd depending upon the particular RFP milestone year.[123] For attainment contingency, the 2018 SIP Update identifies anticipated reductions from the State's mobile source programs between 2026 and 2027.[124]

To comply with sections 172(c)(9) and 182(c)(9), as interpreted in the *Bahr* v. *EPA* decision, a state must develop, adopt and submit a contingency measure to be triggered upon a failure to meet RFP milestones or failure to attain the NAAQS by the applicable

[115] 70 FR 71612 (November 29, 2005). See also 2008 Ozone SRR, 80 FR 12264, 12285 (March 6, 2015).

[116] 80 FR 12264, 12285 (March 6, 2015).

[117] See, *e.g.,* 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

[118] See, *e.g., LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

[119] *Bahr* v. *EPA,* 836 F.3d at 1235–1237 (9th Cir. 2016).

[120] Id. at 1235–1237.

[121] The *Bahr* v. *EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but given the similarity between the statutory language in section 172(c)(9) and the ozone-specific contingency measure provision in section 182(c)(9), we find that the decision affects how both sections of the Act must be interpreted.

[122] 2016 AQMP, 4–51 and 4–52; Appendix VI–C, pages V–C–1 to V–C–4.

[123] 2018 SIP Update, tables VII–2 and VII–5.

[124] 2018 SIP Update, Table VII–6.

attainment date regardless of the extent to which already-implemented measures would achieve surplus emissions reductions beyond those necessary to meet RFP milestones and beyond those predicted to achieve attainment of the NAAQS. Therefore, to fully address the contingency measure requirement for the 2008 ozone NAAQS in the Coachella Valley, the District has committed to develop, adopt and submit a contingency measure to CARB in sufficient time to allow CARB to submit the contingency measure as a SIP revision to the EPA within 12 months of the EPA's final conditional approval of the contingency measure element of the 2016 Coachella Valley Ozone SIP.[125] The District's specific commitment is to modify one or more existing rules, or adopt a new rule or rules, to include a more stringent requirement or remove an exemption if the EPA determines that the Coachella Valley nonattainment area has missed an RFP milestone for the 2008 ozone NAAQS. More specifically, the District has identified a list of 8 different rules that the District is reviewing for inclusion of potential contingency provisions. The rules and the types of revisions under review for contingency purposes include, among others: amending existing Rule 1110.2 (''Emissions from Gaseous- and Liquid-Fueled Engines'') to remove exemptions for orchard wind machines powered by internal combustion engines and agricultural stationary engines; amending existing Rule 1134 (''Emissions of Oxides of Nitrogen from Stationary Gas Turbines'') to require more stringent NO_X limits for outer continental shelf turbines and produced gas turbines and/or remove or limit the exemptions for near-limit and low-use turbines; and adopting new Rule 1150.3 (''NO_X Reductions from Combustion Equipment at Landfills'') to require more stringent NO_X limits through use of gas clean-up or other technologies.

CARB has separately committed to adopt and submit the District's revised rule(s) to the EPA within one year of the EPA's final action on the contingency measures element of the 2016 Coachella Valley Ozone SIP.[126]

3. The EPA's Review of the State's Submission

Sections 172(c)(9) and 182(c)(9) require contingency measures to address potential failure to achieve RFP milestones or failure to attain the NAAQS by the applicable attainment date. For the purposes of evaluating the contingency measure element of the 2016 Coachella Valley Ozone SIP, we find it useful to distinguish between contingency measures to address potential failure to achieve RFP milestones (''RFP contingency measures'') and contingency measures to address potential failure to attain the NAAQS (''attainment contingency measures'').

With respect to the RFP contingency measures requirement, we have reviewed the surplus emissions estimates in each of the RFP milestone years, as shown in the 2018 SIP Update, and find that the calculations are correct. We therefore agree that the 2016 Coachella Valley Ozone SIP provides surplus emissions reductions well beyond those necessary to demonstrate RFP in all of the RFP milestone years. While such surplus emissions reductions in the RFP milestone years do not represent contingency measures themselves, we believe they are relevant in evaluating the adequacy of RFP contingency measures that are submitted (or will be submitted) to meet the requirements of sections 172(c)(9) and 182(c)(9).

In this case, the District and CARB have committed to develop, adopt, and submit a revised District rule or rules, or a new rule or rules, as an RFP contingency measure within one year of our final action on the 2016 Coachella Valley Ozone SIP. The specific types of revisions the District has committed to make upon an RPF milestone failure, such as increasing the stringency of an existing requirement or removing an exemption, would comply with the requirements in CAA sections 172(c)(9) and 182(c)(9) because they would be undertaken if the area fails to meet an RFP milestone and would take effect without significant further action by the state or the EPA.

Neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but we generally expect that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, which, for ozone, amounts to reductions of 3 percent of the baseline emissions inventory for the nonattainment area. For the 2008 ozone NAAQS in the Coachella Valley, one year's worth of RFP is approximately 0.5 tpd of VOC or 0.9 tpd of NO_X reductions.[127]

In this instance, because of the nature of the District's intended contingency measure (*i.e.,* to modify an existing rule or rules to increase the stringency or to remove an exemption), the District did not quantify the potential additional emission reductions from its contingency measure commitment, but we believe that it is unlikely that the RFP and attainment contingency measures, once adopted and submitted, will in themselves achieve one year's worth of RFP (*i.e.,* 0.5 tpd of VOC or 0.9 tpd of NO_X) given the types of rule revisions under consideration and the magnitude of emissions reductions constituting one year's worth of RFP. However, the 2018 SIP Update provides the larger SIP planning context in which to judge the adequacy of the to-be-submitted District contingency measure by calculating the surplus emissions reductions estimated to be achieved in the RFP milestone years and the attainment year. Table VII–2 in the 2018 SIP Update identifies estimates of surplus NO_X reductions in the Coachella Valley for each RFP milestone year. These estimates range from 33.9 percent in milestone year 2017 to 42.9 percent in milestone year 2023.[128] These values far eclipse one year's worth of RFP (*i.e.,* 3 percent, approximately 0.5 tpd of VOC or 0.9 tpd NO_X) and provide the basis to conclude that the risk of any failure to achieve an RFP milestone for the 2008 ozone NAAQS in the Coachella Valley is very low. The surplus reflects already implemented regulations and is primarily the result of vehicle turnover, which refers to the ongoing replacement by individuals, companies, and government agencies of older, more polluting vehicles and engines with newer vehicles and engines designed to meet more stringent CARB mobile source emission standards. In light of the extent of surplus NO_X emissions reductions in the RFP milestone years, the emissions reductions from the District contingency measure would be sufficient to meet the contingency measure requirements of the CAA with respect to RFP milestones, even though the measure would likely achieve emissions reductions lower than the EPA normally recommends for reductions from such a measure.

For the attainment contingency measure, CARB estimated 0.31 tpd of

[125] Letter dated August 2, 2019, from Wayne Nastri, SCAQMD Executive Officer, to Richard Corey, Executive Officer, CARB.

[126] Letter dated September 9, 2019, from Michael Benjamin, Chief, Air Quality and Science Division, CARB, to Amy Zimpfer, Associate Director, EPA Region IX.

[127] The 2011 baseline for NO_X and VOC is 29.8 tpd and 16.9 tpd, respectively, as shown in tables VII–1 and VII–2 of the 2018 SIP Update. Three percent of the baselines is 0.9 tpd of NO_X and 0.5 tpd of VOC, respectively.

[128] 2018 SIP Update, Table VII–2.

NO_X and 0.01 tpd VOC surplus reductions in 2027,[129] which is short of the one year's worth of reductions necessary. We are not proposing action on the attainment contingency measures at this time. Attainment contingency measures are a distinct provision of the CAA that we may act on separately from the attainment requirements.

For these reasons, we propose to approve conditionally the RFP contingency measure element of the 2016 Coachella Valley Ozone SIP as supplemented by commitments from the District and CARB to adopt and submit contingency measures to meet the RFP and attainment contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9). Our proposed approval is conditional because it relies upon commitments to adopt and submit specific enforceable contingency measures (*i.e.,* revised or new District rule or rules with contingent provisions). Conditional approvals are authorized under CAA section 110(k)(4) of the CAA. We are not proposing action on the attainment contingency measure at this time.

H. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs or ''budgets'') contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Ozone plans should identify budgets for on-road emissions of ozone precursors (NO_X and VOC) in the area for each RFP milestone year and, if the plan demonstrates attainment, the attainment year.[130]

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria at 40 CFR 93.118(e)(4). To meet these requirements, the budgets must be consistent with the attainment and RFP requirements and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[131]

The EPA's process for determining adequacy of a budget consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and, (3) making a finding of adequacy or inadequacy.[132]

2. Summary of the State's Submission

The 2016 AQMP includes budgets for the 2018, 2021, and 2024 RFP milestone years, and a 2026 attainment year. The budgets for 2018, 2021, and 2024 were derived from the 2012 RFP baseline year and the associated RFP milestone years. The budgets are affected by the *South Coast II* decision vacating the alternative baseline year provision, and therefore, the EPA has not previously acted on the budgets. In the submittal letters for the 2016 AQMP and the 2018 SIP Update, CARB requested that the EPA limit the duration of our approval of the budgets to last only until the effective date of future EPA adequacy findings for replacement budgets.[133] On September 9, 2019, CARB provided further explanation in connection with its request to limit the duration of the approval of the budgets in the 2018 SIP Update.[134]

The 2018 SIP Update revised the RFP demonstration consistent with the *South Coast II* decision (*i.e.,* by using a 2011 RFP baseline year) and identifies new budgets for the Coachella Valley for VOC and NO_X for each updated RFP milestone year through 2026. The budgets in this 2018 SIP Update replace all of the budgets contained in the 2016 AQMP.

Like the budgets in the 2016 AQMP, the budgets in the 2018 SIP Update were calculated using EMFAC2014, the version of CARB's EMFAC model approved by the EPA for estimating emissions from on-road vehicles operating in California at the time the 2016 AQMP and 2018 SIP Update were developed. However, the budgets in the 2018 SIP Update reflect updated VMT estimates from the 2016 RTP/SCS[135] and are rounded up to the nearest tenth tpd, instead of the nearest whole number. Accordingly, the updated budgets are more precise, and they align with the emissions inventory, RFP and attainment demonstrations in the 2016 AQMP.[136] The conformity budgets for NO_X and VOC in the 2018 SIP Update for the Coachella Valley are provided in Table 7 below.

TABLE 7—TRANSPORTATION CONFORMITY BUDGETS FOR THE 2008 OZONE NAAQS IN THE COACHELLA VALLEY

[Summer planning inventory, tpd]

Budget Year	VOC	NO_X
2020	3.7	8.4
2023	3.3	4.6
2026	3.0	4.2

Source: Table VII–3 of the 2018 SIP Update.

3. The EPA's Review of the State's Submission

As part of our review of the approvability of the budgets in the 2018 SIP Update, we have evaluated the budgets using our adequacy criteria in 40 CFR 93.118(e)(4) and (5). We will complete the adequacy review concurrently with our final action on the 2016 Coachella Valley Ozone SIP. The EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing

[129] 2026 baseline emissions minus 2027 baseline emissions. See 2018 SIP Update, Table VII–6.

[130] 40 CFR 93.102(b)(2)(i).

[131] 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[132] 40 CFR 93.118(f)(2).

[133] Letter dated April 27, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, and letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[134] Letter dated September 9, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Assistant Director, Air Division, EPA Region IX.

[135] 2016 RTP/SCS, Amendment 2, adopted by SCAG in July 2017.

[136] For instance, the 2016 AQMP estimates that 2026 on-road vehicle emissions (summer planning inventory) would be 2.93 tpd for VOC and 4.12 tpd for NO_X. See Appendix A, page A–23 through A–26. The corresponding budgets from the 2018 SIP Update are 3.0 tpd for VOC and 4.2 tpd for NO_X. See Table 5 and surrounding discussion in Section V of the TSD for this action for additional detail.

approval of them.[137] Today, the EPA is announcing that the adequacy process for these budgets begins and the public has 30 days to comment on their adequacy, per the transportation conformity regulation at 40 CFR 93.118(f)(2)(i) and (ii).

As documented in Table 4 of section V of the EPA's TSD for this proposal, we preliminarily conclude that the budgets in the 2018 SIP Update for the Coachella Valley meet each adequacy criterion. We have completed our detailed review of the 2016 Coachella Valley Ozone SIP and are proposing herein to approve the SIP revision's attainment and RFP demonstrations. We have also reviewed the budgets in the 2018 SIP Update and found that they are consistent with the attainment and RFP demonstrations for which we are proposing approval, are based on control measures that have already been adopted and implemented, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 40 CFR 93.1118(e)(4) and (5). Therefore, we are proposing to approve the 2020, 2023, and 2026 budgets in the 2018 SIP Update (and shown in Table 7, above). At the point when we finalize our adequacy process or approve the budgets for the 2008 ozone NAAQS in the 2018 SIP Update as proposed (whichever occurs first; note that they could also occur concurrently per 40 CFR 93.118(f)(2)(iii)), then they will replace the budgets that we previously found adequate for use in transportation conformity determinations.[138]

Under our transportation conformity rule, as a general matter, once budgets are approved, they cannot be superseded by revised budgets submitted for the same CAA purpose and the same year(s) addressed by the previously approved SIP submittal until the EPA approves the revised budgets as a SIP revision. In other words, as a general matter, such approved budgets cannot be superseded by revised budgets found adequate, but rather only through approval of the revised budgets, unless the EPA specifies otherwise in its approval of a SIP by limiting the duration of the approval to last only until subsequently submitted budgets are found adequate.[139]

In this instance, CARB has requested that we limit the duration of our approval of the budgets in the 2016 Coachella Valley Ozone SIP only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets, and in September 2019, CARB provided further explanation for its request.[140] Generally, we will consider a state's request to limit an approval of a budget only if the request includes the following elements:[141]

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

CARB's request includes an explanation for why the budgets have become, or will become, outdated or deficient. In short, CARB has requested that we limit the duration of the approval of the budgets in light of the EPA's recent approval of EMFAC2017, an updated version of the model (EMFAC2014) used for the budgets in the 2016 Coachella Valley Ozone SIP.[142] EMFAC2017 updates vehicle mix and emissions data of the previously approved version of the model, EMFAC2014.

Preliminary calculations by CARB indicate that EMFAC2017-derived motor vehicle emissions estimates for the Coachella Valley will exceed the corresponding EMFAC2014-derived budgets in the 2016 Coachella Valley Ozone SIP. In light of the approval of EMFAC2017, CARB explains that the budgets from the 2016 Coachella Valley Ozone SIP, for which we are proposing approval in today's action, will become outdated and will need to be revised using EMFAC2017. In addition, CARB states that, without the ability to replace the budgets using the budget adequacy process, the benefits of using the updated data may not be realized for a year or more after the updated SIP revision (with the EMFAC2017-derived budgets) is submitted, due to the length of the SIP approval process. We find that CARB's explanation for limiting the duration of the approval of the budgets is appropriate and provides us with a reasonable basis on which to limit the duration of the approval of the budgets.

We note that CARB has not committed to update the budgets as part of a comprehensive SIP update, but as a practical matter, CARB must submit a SIP revision that includes updated demonstrations as well as the updated budgets to meet the adequacy criteria in 40 CFR 93.118(e)(4);[143] and thus, we do not need a specific commitment for such a plan at this time. For the reasons provided above, and in light of CARB's explanation for why the budgets will become outdated and should be replaced upon an adequacy finding for updated budgets, we propose to limit the duration of our approval of the budgets in the 2016 Coachella Valley Ozone SIP until we find revised budgets based on EMFAC2017 to be adequate.

I. Other Clean Air Act Requirements Applicable to Severe Ozone Nonattainment Areas

In addition to the SIP requirements discussed in the previous sections, the CAA includes certain other SIP requirements applicable to Severe ozone nonattainment areas, such as the Coachella Valley. We describe these provisions and their current status below.

1. Enhanced Vehicle Inspection and Maintenance Programs

Section 182(c)(3) of the CAA requires states with ozone nonattainment areas classified under subpart 2 as Serious or above to implement an enhanced motor vehicle I/M program in those areas. The requirements for those programs are provided in CAA section 182(c)(3) and 40 CFR part 51, subpart S.

Consistent with the 2008 Ozone SRR, no new I/M programs are currently required for nonattainment areas for the 2008 ozone NAAQS.[144] The EPA previously approved California's I/M program in Coachella Valley as meeting

[137] Under the transportation conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

[138] We found adequate the budgets from the 2008 Ozone Early Progress Plan for the 1997 ozone NAAQS at 73 FR 25694 (May 7, 2008). The budgets in the 2018 SIP Update for the 2008 ozone NAAQS are lower than the corresponding budgets approved for the 1997 ozone NAAQS. For instance, the current budgets of 7 tpd for VOC and 26 tpd for NO_X for all years, would be replaced by budgets of 3.7 tpd for VOC and 8.4 tpd for NO_X in 2020, and 3.3 tpd for VOC and 4.6 tpd for NO_X in 2023.

[139] 40 CFR 93.118(e)(1).

[140] CARB's request to limit the duration of the approval of the Coachella Valley ozone MVEB is contained in a letter dated September 9, 2019, from Michael Benjamin, Chief, Air Quality and Science Division, CARB, to Amy Zimpfer, Associate Director, EPA Region IX.

[141] 67 FR 69141 (November 15, 2002), limiting our prior approval of MVEB in certain California SIPs.

[142] On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. See 84 FR 41717.

[143] Under 40 CFR 93.118(e)(4), the EPA will not find a budget in a submitted SIP to be adequate unless, among other criteria, the budgets, when considered together with all other emissions sources, are consistent with applicable requirements for RFP and attainment. 40 CFR 93.118(e)(4)(iv).

[144] 2008 Ozone SRR, 80 FR 12264, at 12283 (March 6, 2015).

the requirements of the CAA and applicable EPA regulations for enhanced I/M programs.[145]

2. New Source Review Rules

Section 182(a)(2)(C) of the CAA requires states to develop SIP revisions containing permit programs for each of its ozone nonattainment areas. The SIP revisions are to include requirements for permits in accordance with CAA sections 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source for VOC and NO_X anywhere in the nonattainment area.[146] The 2008 Ozone SRR includes provisions and guidance for nonattainment new source review (NSR) programs.[147] The EPA has previously approved the District's NSR rules as they apply to Coachella Valley into the SIP based in part on a conclusion that the rules adequately addressed the NSR requirements specific to Severe areas.[148] On December 13, 2018, the EPA approved the District's 2008 ozone certification that its NSR program previously approved into the SIP is adequate to meet the requirements for the 2008 ozone NAAQS.[149]

3. Clean Fuels Fleet Program

Sections 182(c)(4)(A) and 246 of the CAA require California to submit to the EPA for approval measures to implement a Clean Fuels Fleet Program in ozone nonattainment areas classified as Serious and above. Section 182(c)(4)(B) of the CAA allows states to opt out of the federal clean-fuel vehicle fleet program by submitting a SIP revision consisting of a program or programs that will result in at least equivalent long-term reductions in ozone precursors and toxic air emissions.

In 1994, CARB submitted a SIP revision to the EPA to opt out of the federal clean-fuel fleet program. The submittal included a demonstration that California's low-emissions vehicle program achieved emissions reductions at least as large as would be achieved by the federal program. The EPA approved the SIP revision to opt out of the federal program on August 27, 1999.[150] There have been no changes to the federal Clean Fuels Fleet program since the EPA approved the California SIP revision to opt out of the federal program, and thus, no corresponding changes to the SIP are required. Thus, we find that the California SIP revision to opt out of the federal program, as approved in 1999, meets the requirements of CAA sections 182(c)(4)(A) and 246 for Coachella Valley for the 2008 ozone NAAQS.

4. Gasoline Vapor Recovery

Section 182(b)(3) of the CAA requires states to submit a SIP revision by November 15, 1992, that requires owners or operators of gasoline dispensing systems to install and operate gasoline vehicle refueling vapor recovery (''Stage II'') systems in ozone nonattainment areas classified as Moderate and above. California's ozone nonattainment areas implemented Stage II vapor recovery well before the passage of the CAA Amendments of 1990.[151]

Section 202(a)(6) of the CAA requires the EPA to promulgate standards requiring motor vehicles to be equipped with onboard refueling vapor recovery (ORVR) systems. The EPA promulgated the first set of ORVR system regulations in 1994 for phased implementation on vehicle manufacturers, and since the end of 2006, essentially all new gasoline-powered light and medium-duty vehicles are ORVR-equipped.[152] Section 202(a)(6) also authorizes the EPA to waive the SIP requirement under CAA section 182(b)(3) for installation of Stage II vapor recovery systems after such time as the EPA determines that ORVR systems are in widespread use throughout the motor vehicle fleet. Effective May 16, 2012, the EPA waived the requirement of CAA section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of classification.[153] Thus, a SIP submittal meeting CAA section 182(b)(3) is not required for the 2008 ozone NAAQS.

While a SIP submittal meeting CAA section 182(b)(3) is not required for the 2008 ozone NAAQS, under California state law (*i.e.,* Health and Safety Code section 41954), CARB is required to adopt procedures and performance standards for controlling gasoline emissions from gasoline marketing operations, including transfer and storage operations. State law also authorizes CARB, in cooperation with local air districts, to certify vapor recovery systems, to identify defective equipment and to develop test methods. CARB has adopted numerous revisions to its vapor recovery program regulations and continues to rely on its vapor recovery program to achieve emissions reductions in ozone nonattainment areas in California.

In the Coachella Valley, the installation and operation of CARB-certified vapor recovery equipment is required and enforced by SCAQMD Rules 461 (''Gasoline Transfer and Dispensing'') and 462 (''Organic Liquid Loading''). These rules were most recently approved into the SIP on April 11, 2013, and July 21, 1999, respectively.[154]

5. Enhanced Ambient Air Monitoring

Section 182(c)(1) of the CAA requires that all ozone nonattainment areas classified as Serious or above implement measures to enhance and improve monitoring for ambient concentrations of ozone, NO_X, and VOC, and to improve monitoring of emissions of NO_X and VOC. The enhanced monitoring network for ozone is referred to as the photochemical assessment monitoring station (PAMS) network. The EPA promulgated final PAMS regulations on February 12, 1993.[155]

On November 10, 1993, CARB submitted to the EPA a SIP revision addressing the PAMS network for six ozone nonattainment areas, including the Southeast Desert Modified Air Quality Maintenance Area (SE Desert AQMA), to meet the enhanced monitoring requirements of CAA section 182(c)(1) and the PAMS regulations for the 1979 1-hour ozone NAAQS. The SE Desert AQMA included portions of Los Angeles, Riverside, and San Bernardino counties, including the area that would later be designated as the Riverside County (Coachella Valley) ozone nonattainment area for the 1997 and 2008 ozone NAAQS. The EPA determined that the PAMS SIP revision met all applicable requirements for enhanced monitoring and approved the PAMS submittal into the California SIP.[156]

The 2016 AQMP discusses compliance with the CAA section 182(c)(1) enhanced monitoring requirements in terms of the District's ''Annual Air Quality Monitoring Network Plan (July 2016)'' (ANP).[157] The District's 2016 ANP describes the steps taken to address the requirements of section 182(c)(1), includes descriptions of the PAMS program and

[145] 75 FR 38023 (July 1, 2010).

[146] See also CAA section 182(e).

[147] 80 FR 12264 (March 6, 2015).

[148] On December 4, 1996 (61 FR 64291), the EPA approved SCAQMD's NSR rules (the District's Regulation XIII) as satisfying the NSR requirements in title I, part D of the CAA for Extreme (South Coast) and Severe (Coachella Valley) ozone nonattainment areas.

[149] 83 FR 64026 (December 13, 2018).

[150] 64 FR 46849 (August 27, 1999).

[151] General Preamble, 57 FR 13498, 13514 (April 16, 1992).

[152] 77 FR 28772, at 28774 (May 16, 2012).

[153] 40 CFR 51.126(b).

[154] 78 FR 21542 and 64 FR 39037.

[155] 58 FR 8452 (February 12, 1993).

[156] 82 FR 45191 (September 28, 2017).

[157] 2016 AQMP, Table 6–2.

provides additional details about the PAMS network.[158] The EPA approved the District's PAMS network as part of our annual approval of the District's ANP.[159]

Prior to 2006, the EPA's ambient air monitoring regulations in 40 CFR part 58 (''Ambient Air Quality Surveillance'') set forth specific SIP requirements (see former 40 CFR 52.20). In 2006, the EPA significantly revised and reorganized 40 CFR part 58.[160] Under revised 40 CFR part 58, SIP revisions are no longer required; rather, compliance with EPA monitoring regulations is established through review of required annual monitoring network plans.[161] The 2008 Ozone SRR made no changes to these requirements.[162] Therefore, based on our review and approval of the 2016 ANP for South Coast, including the Coachella Valley, we find that the 2016 Coachella Valley Ozone SIP adequately addresses the enhanced monitoring requirements under CAA section 182(c)(1), and we propose to approve that portion of the plan.

6. CAA Section 185 Fee Program

Sections 182(d)(3) and 185 of the CAA require that the SIP for each Severe and Extreme ozone nonattainment area provide that, if the area fails to attain by its applicable attainment date, each major stationary source of VOC and NO_X located in the area shall pay a fee to the state as a penalty for such failure for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. States are not yet required to submit a SIP revision that meets the requirements of CAA section 185 for the 2008 ozone NAAQS.[163]

IV. Proposed Action

For the reasons discussed in this notice, under CAA section 110(k)(3), the EPA is proposing to approve as a revision to the California SIP the following portions of the Final 2016 Air Quality Management Plan submitted by CARB on April 27, 2017, and the 2018 SIP Update submitted on December 5, 2018, that compose the 2016 Coachella Valley Ozone SIP.

- Base year emissions inventory element in the 2016 AQMP as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS;
- RACM demonstration element in the 2016 AQMP as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS;
- Attainment demonstration element for the 2008 ozone NAAQS in the 2016 AQMP as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- ROP demonstration element in the 2016 AQMP as meeting the requirements of CAA 182(b)(1) and 40 CFR 51.1110(a)(2) for the 2008 ozone NAAQS;
- RFP demonstration element in the 2018 SIP Update as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS;
- VMT emissions offset demonstration element in the 2016 AQMP as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- Motor vehicle emissions budgets in the 2018 SIP Update for the 2020 and 2023 RFP milestone years and the 2026 attainment year (see Table 7) because they are consistent with the RFP and attainment demonstrations for the 2008 ozone NAAQS proposed for approval herein and meet the other criteria in 40 CFR 93.118(e);
- Enhanced vehicle inspection and maintenance program element in the 2016 AQMP as meeting the requirements of CAA section 182(c)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- Clean fuels fleet program element in the 2016 AQMP as meeting the requirements of CAA sections 182(c)(4)(A) and 246 and 40 CFR 51.1102 for the 2008 ozone NAAQS; and
- Enhanced monitoring element in the 2016 AQMP as meeting the requirements of CAA section 182(c)(1) and 40 CFR 51.1102 for the 2008 ozone NAAQS.[164]

With respect to the MVEBs, we are proposing to limit the duration of the approval of the MVEBs to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We are doing so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets prior to our taking final action on the future SIP revision that includes the updated budgets.

We are also proposing that paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8) of District Rule 301 (''Permitting and Associated Fees''), submitted to the EPA on August 5, 2019, and approved on October 1, 2019, at 84 FR 52005, meet the emission statement requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS.

Lastly, we are proposing, under CAA section 110(k)(4), to conditionally approve the contingency measure element of the Coachella Valley Ozone SIP as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP contingency measures. Our proposed approval is based on commitments by the District and CARB to supplement the element through submission, as a SIP revision (within one year of final conditional approval action), of a new or revised District rule or rules that would include a more stringent requirement or would remove an exemption if an RFP milestone is not met.[165] We are not proposing action on the attainment contingency measure at this time.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air

[158] 2016 ANP, 13–15, 28 and Appendix A, 8. Starting in 2007, the EPA's monitoring rules at 71 FR 61236 (October 17, 2006) required the submittal and EPA action on ANPs. SCAQMD's 2016 ANP can be found in the docket for today's action.

[159] Letter dated October 31, 2016, from Gwen Yoshimura, EPA Region IX to Matt Miyasoto, Deputy Executive Officer, SCAQMD, approving the 2016 South Coast ANP.

[160] 71 FR 61236 (October 17, 2006).

[161] 40 CFR 58.2(b) now provides ''The requirements pertaining to provisions for an air quality surveillance system in the SIP are contained in this part.''

[162] The 2008 ozone SRR addresses PAMS-related requirements at 80 FR 12264, at 12291 (March 6, 2015).

[163] See 40 CFR 51.1117. For the Coachella Valley, a section 185 SIP revision for the 2008 ozone NAAQS will be due on July 20, 2022.

[164] Regarding other applicable requirements for the 2008 ozone NAAQS in the Coachella Valley, the EPA has previously approved SIP revisions that address the nonattainment area requirements for NSR and for implementation of RACT for the South Coast, including the Coachella Valley, for the 2008 ozone NAAQS. See 83 FR 64026 (December 13, 2018) (NSR) and 82 FR 43850 (September 20, 2017) (RACT). SIP revisions for the Coachella Valley addressing the penalty fee requirements under CAA sections 181(b)(4) and 185 are not yet due for the 2008 ozone NAAQS.

[165] Letter dated August 2, 2019, from Wayne Nastri, SCAQMD Executive Officer, to Richard Corey, CARB Executive Officer; and letter dated September 9, 2019, from Michael Benjamin, Chief, Air Quality and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.

Act. Accordingly, this proposed action merely proposes to approve, or conditionally approve, state plans 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 proposed 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, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 19, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2020–00538 Filed 1–16–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 87 and 1050

RIN 0991–AC13

Ensuring Equal Treatment of Faith-Based Organizations

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Health and Human Services' (''Department'') general regulations to implement Executive Order 13831, on the Establishment of a White House Faith and Opportunity Initiative. This proposed rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, clarify the Department's guidance documents for financial assistance with regard to faith-based organizations, and eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance or Supreme Court precedent. This proposed rulemaking is intended to ensure that the Department's programs are implemented in a manner consistent with the requirements of federal law, including the First Amendment to the Constitution and the Religious Freedom Restoration Act.

DATES: Comments must be received by HHS on or before February 18, 2020.

ADDRESSES: You may submit comments to this proposed rule, identified by RIN 0991–AC13, by any of the following methods:

- *Federal eRulemaking Portal.* You may submit electronic comments at *http://www.regulations.gov* by searching for the Docket ID number HHS–OS–2019–0012. Follow the instructions at *http://www.regulations.gov* online for submitting comments through this method.
- *Regular, Express, or Overnight Mail:* You may mail comments to U.S. Department of Health and Human Services, Center for Faith and Opportunity Initiatives (Partnership Center), Attention: Equal Treatment NPRM, RIN 0991–AC13, Hubert H. Humphrey Building, Room 747D, 200 Independence Avenue SW, Washington, DC 20201.
- *Hand Delivery/Courier:* You may hand deliver comments to the U.S. Department of Health and Human Services, Center for Faith and Opportunity Initiatives, Attention: Equal Treatment NPRM, RIN 0991–AC13, Hubert H. Humphrey Building, Room 747D, 200 Independence Avenue SW, Washington, DC 20201.

All comments received by the methods and due date specified above will be posted without change to *http://www.regulations.gov,* including any personal information provided, and such posting may occur before or after the closing of the comment period.

The Department will consider all comments received by the date and time specified in the **DATES** section above; but, because of the large number of public comments we normally receive on **Federal Register** documents, it is not able to provide individual acknowledgements of receipt.

Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays. Electronic comments with attachments should be in Microsoft Word or Excel; however, we prefer Microsoft Word.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Docket: For complete access to background documents or posted comments, go to *http://www.regulations.gov* and search for Docket ID number HHS–OS–2019–0012.

FOR FURTHER INFORMATION CONTACT: Center for Faith and Opportunity Initiatives at 202–260–6501.

SUPPLEMENTARY INFORMATION:

I. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-Based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that ''private and charitable groups, including religious ones . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social

services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives, with primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based and other community organizations; to ensure equal protection of the laws for faith-based and community organizations; and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with, and necessary to further, the fundamental principles and policymaking criteria articulated in the Order.

Consistent with Executive Orders 13199 and 13279, on July 9, 2004, the Department of Health and Human Services (''HHS'' or ''Department'') promulgated regulations at 45 CFR part 87 (''Part 87''), 69 FR 42586 (July 16, 2004). These regulations implemented the executive branch policy set forth in those Executive Orders that, within the framework of constitutional guidelines, religiously affiliated organizations should be able to compete on an equal footing with other organizations for the Department's funding without impairing the religious character of such organizations. The rulemaking created a new regulation on Equal Treatment for Faith-Based Organizations, and revised Department regulations to remove barriers to the participation of faith-based organizations in Department programs and to ensure that these programs were implemented in a manner consistent with applicable statutes, including the Religious Freedom Restoration Act (''RFRA''), and the requirements of the Constitution, including the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment.

President Obama maintained President Bush's program, but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). Executive Order 13559 made various changes to Executive Order 13279, including: Making both minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the faith-based provider give notice of potential referral to potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, including the Department's regulations at Title 45 of the Code of Federal Regulations, part 87. The revised regulations defined ''indirect assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary. 45 CFR 87.1(c).

On August 6, 2015, HHS issued a notice of proposed rulemaking to amend 45 CFR part 87 to comport with Executive Order 13559. 80 FR 47271 (August 6, 2015). This notice of proposed rulemaking proposed to clarify what constitutes direct and indirect financial assistance; changed ''inherently religious activities'' to ''explicitly religious activities''; required faith-based recipients to provide beneficiaries with written notices with respect to certain rights, including the right to a referral if the beneficiary objects to the faith-based organization's religious character; and provided that decisions about awards of Federal financial assistance must be made based on merit without political interference. *Id.* at 47272. Eight other Federal agencies issued similar notices of proposed rulemaking (the ''2015 NPRMs''). On April 4, 2016, one joint final rule was issued to finalize all nine of the 2015 NPRMs issued in response to Executive Order 13559. 81 FR 19355 (April 4, 2016). As applicable to HHS, This joint final rule:

(1) Required HHS to ensure that decisions about Federal financial assistance are made without political interference and without respect to recipient organizations' religious affiliation;

(2) made clear that faith-based organizations are eligible to participate in social service programs on the same basis as any other private organization;

(3) replaced the term ''inherently religious activities'' with the term ''explicitly religious activities'' in existing regulations as the basis for determining which activities cannot be supported with direct Federal financial assistance;

(4) prohibited recipients of direct Federal financial assistance, but not indirect Federal financial assistance, from discriminating against beneficiaries in the provision of program services and in outreach activities relating to those services based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(5) distinguished between ''direct'' and ''indirect'' Federal financial assistance;

(6) required faith-based providers—but not other providers—that receive direct Federal financial assistance under a domestic social service program to provide written notice to program beneficiaries and potential beneficiaries of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activities must be voluntary and that they must be provided separately from the Federally funded activities, and that beneficiaries may report violations; and

(7) required faith-based recipients of domestic direct social service program assistance to undertake reasonable efforts to identify an alternative provider if a beneficiary or prospective beneficiary objects to the religious character of the faith-based organization and, if such an alternative provider is available, to refer the beneficiary to an identified alternative provider and to make a record of the referral. *See* 81 FR at 19426–28.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). Executive Order 13798 states that ''Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.'' Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (October 26, 2017) (the ''Attorney General's Memorandum on Religious Liberty'').

The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing government-funded social services, and that ''government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.''

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships,'' as established in Executive Order 13498, to the ''White House Faith and Opportunity Initiative''; changed the way that the Initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Neighborhood Partnerships'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a ''Liaison for Faith and Opportunity Initiatives.'' Executive Order 13831 also eliminated the alternative provider referral requirement and requirement of notice thereof that had been mandated in Executive Order 13559.

A. Alternative Provider Referral and Alternative Provider Notice Requirement

Executive Order 13559 imposed notice and referral burdens on faith-based organizations not imposed on secular organizations. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, entitled ''Fundamental Principles,'' by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: ''If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.'' Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary ''receives written notice of the protections *set forth in this subsection* prior to enrolling in or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. In 2016, the Department revised its regulations to conform to Executive Order 13559. 81 FR 19355.

In revising its regulations, the Department explained in 2015 that the revisions would implement the alternative provider provisions in Executive Order 13559. Executive Order 13831, however, has removed the alternative provider requirements articulated in Executive Order 13559. The Department also explained that the alternative provider provisions would protect religious liberty rights of social service beneficiaries. But the methods of providing such protections were not required by the Constitution or any applicable law. Indeed, the selected methods are in tension both with more recent Supreme Court precedent regarding nondiscrimination against religious organizations; with the Attorney General's Memorandum on Religious Liberty; and with the Religious Freedom Restoration Act (''RFRA''), 42 U.S.C. 2000bb–2000bb–4.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017) (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520, 533 (1993) (alteration in original)): ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.'" *Id.* (quoting *McDaniel* v. *Paty,* 435 U.S. 618, 628 (1978) (plurality opinion); *see also Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''The religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); Attorney General's Memorandum on Religious Liberty, principle 6 (''Government may not target religious individuals or entities for special disabilities based on their religion.'').

Applying the alternative provider requirement categorically to all faith-based providers, but not to other providers of federally funded social services, is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise implications under RFRA. Under RFRA, where the Government substantially burdens an entity's exercise of religion, the Government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). When a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA, and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a*

Juvenile Justice and Delinquency Prevention Act, 31 O.L.C. 162, 169–71, 174–83 (June 29, 2007). Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. *See Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

B. Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of alternative providers, Part 87, as most recently amended, goes further than Executive Order 13559 by requiring that faith-based social service providers funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct federal funds; and that beneficiaries or potential beneficiaries may report violations. *See* 45 CFR 87.3(i); 45 CFR 1050.3(h) (incorporating the requirements of 45 CFR 87.3(i) by cross-reference).

Separate and apart from these notice requirements, Executive Order 13279, as amended, clearly set forth the underlying requirements of nondiscrimination, voluntariness, and the holding of religious activities separate in time or place from any federally funded activity. Faith-based providers of social services, like other providers of social services, are required to follow the law and the requirements and conditions applicable to the grants and contracts they receive. There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell,* 530 U.S. at 856–57 (O'Connor, J., concurring in judgment) (noting that, in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction.''). There is, therefore, no need for prophylactic protections that create administrative burdens on faith-based providers that are not imposed on similarly situated secular providers.

C. Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance[.]'' 75 FR 71319, 71321 (2010). Following issuance of the Working Group's report, the 2016 joint final rule amended existing executive branch regulations to make that distinction and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR at 19358, 19426–28. In so doing, the final rule attempted to capture the definition of ''indirect'' aid that the U.S. Supreme Court employed in *Zelman* v. *Simmons–Harris,* 536 U.S. 639 (2002). *See* 81 FR at 19361–62.

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—that is, an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,* parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. *Id.* at 656–58. In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' *Id.* at 658.

The final rule issued after the Working Group's report included among its criteria for indirect Federal financial assistance a requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance. *See* 81 FR at 19407–19426. In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. *See* 81 FR at 19426 (definition in part 87). A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

D. Overview of the Proposed Rule

The Department proposes to amend Part 87 to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant federal statutes such as the RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend Part 87 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social service providers refer beneficiaries objecting to receiving services from them to an alternative provider and the requirement that faith-based organizations provide notices that are not required of secular organizations.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and secular organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding. The language would clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department would not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program would retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution.

Finally, the proposed rule would directly reference the definition of ''religious exercise'' in RFRA, and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

E. Explanations for the Proposed Amendments to 45 CFR Part 87

1. Section 87.1 Definitions

a. Scope of Definitions

The Department proposes to delete § 87.1(a) as unnecessary and potentially confusing. The definition section of 45 CFR part 87, by convention, applies only to part 87. By specifying that a definition provided for part 87 may be defined differently in other statutes or regulations, § 87.1(a) only introduces ambiguity as to whether definitions found in other statutes or regulations may supersede the definition provided in § 87.1(a) for purposes of part 87, which was not intended and is potentially confusing. By removing § 87.1(a), it should be clear that definitions provided in § 87.1 apply for purposes of part 87, while not implying that these definitions supersede other definitions provided elsewhere in Federal law or regulation or that those definitions would supersede the definitions provided in § 87.1 when interpreting part 87.

b. Definition of ''Direct Federal Financial Assistance,'' ''Federal Financial Assistance Provided Directly'' and ''Direct Funding''

The Department proposes to re-number § 87.1(b) as § 87.1(a) and revise the definitions of ''direct Federal financial assistance,'' ''Federal financial assistance provided directly,'' and ''direct funding'' to recognize that those terms refer to the direct funding itself, while maintaining the concepts in the current definition. Thus, the proposed revision to the definitions of ''direct Federal financial assistance,'' ''Federal financial assistance provided directly,'' and ''direct funding'' are not intended to change the meanings of those terms as they are used in part 87, but rather to be more clear and more grammatically correct.

c. Definition of ''Directly Funded''

The Department proposes to add a new § 87.1(b) to define ''directly funded'' as ''funded using direct Federal financial assistance.'' Previously, ''directly funded'' was included with the definitions of ''direct Federal financial assistance,'' ''Federal financial assistance provided directly,'' and ''direct funding'' in § 87.1(b), but as ''directly funded'' is an adjective instead of a noun, including it in the terms defined in proposed § 87.1(a) would introduce unnecessary confusion. The Department proposes to define ''directly funded'' as ''funded using Direct Federal financial assistance.''

d. Definition of ''Indirect Federal Financial Assistance'' and ''Federal Financial Assistance Provided Indirectly''

The Department proposes to amend § 87.1(c) to recognize that the terms ''indirect Federal financial assistance'' and ''Federal financial assistance provided indirectly'' refer to the indirect funding itself, while maintaining the concepts in the introductory language in the current § 87.1(c). Thus, the Department would define the terms to mean ''financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider.'' This proposed definition would remove limits on funding that are inconsistent with the First Amendment as the Supreme Court has interpreted it. *See, e.g., Zelman,* 536 U.S. 639; *Trinity Lutheran Church of Columbia,* 137 S. Ct. 2012. In particular, present § 87.1(c)(1)(iii) limits the definition of the term to situations in which ''the beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.'' Under the present rule, if there is a geographical region lacking a ''secular option'' for the use of the Government-provided payment, the Department would have to avoid distribution of benefits within that region. This requirement, however, violates the Supreme Court's admonition that the constitutionality of such programs should not depend on geography or ''whether and why'' a beneficiary chooses a particular program. *Zelman,* 536 U.S. at 656–58.

The Department proposes to eliminate paragraphs (1)(i) and (ii) and (2) of the definition. Paragraph (1) of the current definition identifies when federal financial assistance provided to an organization is considered indirect. Because the proposed definition would define the terms by reference to the indirect funding itself, a separate listing of the elements that make Federal financial assistance indirect is unnecessary. For example, paragraph (1)(ii) is unnecessary: That an ''organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government'' is self-evident from the aspect of the proposed definition that ''the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to

make a choice of a service provider.'' The Department proposes to eliminate paragraph (2) of the current definition because it is redundant with the definition of ''direct Federal financial assistance.''

e. Clarification of ''Federal Financial Assistance''

The Department proposes to add a new § 87.1(d) [1] in order to clarify that ''Federal financial assistance'' does not include a tax credit, deduction, exemption, or guaranty contract. The section also clarifies that the beneficiary's use of assistance is not federal financial assistance: When a beneficiary acquires a good or service with the financial assistance they have received from the government, the vendor of that good or service is not receiving federal financial assistance.

f. Definition of ''Pass-Through Entity''

The Department proposes to re-number § 87.1(d) as § 87.1(e) and to revise the definition of ''pass-through entity'' in order to provide clarity, as the current definition of ''pass-through entity'' uses the terms ''subaward'' and ''subrecipient,'' terms that may need further definition for those not familiar with government funding mechanisms. The proposed definition would eliminate the use of those terms and, instead, define ''pass-through entity'' as an entity that accepts direct Federal financial assistance as a primary recipient or grantee and then distributes that assistance to other organizations that, in turn, provide government-funded social services. For similar reasons and to provide greater specificity, the proposed definition would not use the term ''non-Federal entity,'' but rather ''an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency.'' The proposed definition is not intended to change the meaning of the term.

g. Definition of ''Recipient''

The Department proposes to re-number § 87.1(e) as § 87.1(f) and to revise the definition of ''recipient'' to clarify that the term ''recipient'' includes pass-through entities.

h. Definition of ''Religious Exercise''

The Department proposes to add § 87.1(g) to define ''religious exercise'' for purposes of part 87 as having the definition used in the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc–5(7)(A). Namely, ''religious exercise'' would ''include[ ] any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'' The Department proposes to use the RLUIPA definition of ''religious exercise'' because that is the definition used by Congress in both RLUIPA and RFRA. Thus, that definition has been interpreted by courts in analyzing those two statutes, which provides an extensive legal framework that can be used in understanding what does or does not constitute religious exercise.

2. Section 87.3 Faith-Based Organizations and Federal Financial Assistance

a. Proposed Section 87.3(a)

The Department proposes to amend § 87.3(a) to avoid confusion and to clarify the extent of protections available for faith-based organizations that would like to participate in government programs. Specifically, the Department proposes to revise this paragraph to refer to only ''faith-based organizations,'' instead of ''faith-based or religious organizations'': The term ''faith-based organizations'' encompasses ''religious organizations,'' and including both terms could be misinterpreted as implying a difference between ''faith-based organizations'' and ''religious organizations'' while, in fact, the terms are used interchangeably.

The Department also proposes to revise § 87.3(a), by inserting, as the second sentence of the provision, recognition of the government's obligation to provide religious accommodations where consistent with Federal law, the Attorney General's Memorandum on Religious Liberty, and the Religion Clauses of the First Amendment to the U.S. Constitution. The Department also proposes to change the terms ''religious character or affiliation'' to ''religious affiliation or exercise.'' This change is intended to provide clarity as many Federal religious civil rights laws—as well as the First Amendment to the U.S. Constitution—protect religious ''exercise'' and there is, therefore, a body of law providing legal guidance on protecting religious exercise, which does not exist with respect to the term ''character.'' Using unique terms in § 87.3(a) additionally creates confusion because it could be presumed that ''religious character'' means something different than ''religious affiliation'' or ''exercise,'' but it is unclear what that distinction would be. By changing ''religious character or affiliation'' to ''religious affiliation or exercise,'' § 87.3(a) becomes more consistent with similar protections in Federal law, and preexisting legal structures can be used in interpreting § 87.3(a).

The Department proposes to delete the last sentence of the current section 87.3(a)—that ''program'' refers to activities supported by discretionary, formula, or block grants—because this statement could be misunderstood and is redundant. Section 87.2 explains in detail the scope of part 87, including certain discretionary, formula, and block grants that are exempted from the provisions of part 87. The simple statement that ''program'' in section 87.3(a) refers to activities supported by ''discretionary, formula or block grants'' could be misinterpreted as asserting that all activities supported by such grants are ''programs'' covered by section 87.3, but this understanding would be inaccurate, as section 87.2 makes clear. Because section 87.2 provides the correct scope of applicability of part 87, the additional statement in section 87.3(a) is more confusing than helpful.

Finally, the Department proposes to include a requirement that notices or announcements of award opportunities and notices of awards or contracts, issued by HHS awarding agencies, shall include language similar to those found in appendices to the proposed rule, which serve as notice to potential recipients of federal financial assistance of certain protections afforded to them under federal law. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (''World Vision Opinion''). This change is intended to ensure that faith-based organizations are aware of their legal protections so that they will not fail to participate in government programs because of confusion about what options are available to them and to ensure that pass-through entities are aware of legal protections that apply to faith-based subrecipients.

b. Proposed Section 87.3(b)

The Department proposes to revise § 87.3(b) to increase clarity and to avoid violating the constitutional rights of faith-based organizations. Specifically, the Department proposes to apply § 87.3(b) only to organizations that ''receive'' direct Federal financial assistance, instead of to organizations that ''*apply for* or receive'' such

[1] As discussed below, the Department proposes to renumber §§ 87.1(d) and (e) as §§ 87.1(e) and (f).

assistance. Nothing in § 87.3(b), which relates to the use of direct Federal financial assistance, is relevant to organizations that apply for direct Federal financial assistance or have applied to participate in government programs, but have not received any direct Federal financial assistance. Including ''apply for'' in § 87.3(b) only discourages organizations from applying to participate in government programs without cause.

The Department also proposes to revise the prohibition, in the first sentence of the provision, that organizations may not ''support or engage in any explicitly religious activity'' as part of a program or service funded with direct Federal financial assistance, to state, instead, that organizations may not ''engage in'' such activity. The inclusion of the word ''support'' is vague and overly broad, and may encompass protected activity. For example, if a faith-based organization provides addiction counseling that is funded through direct Federal financial assistance and provides attendees a map of the location that labels a room as a ''chapel,'' would providing that map to program participants raise claims that the organization is ''supporting'' its explicitly religious activities because a program participant may see that the facility includes a chapel and thereby engage in such religious activity? Prohibiting organizations from ''engaging in'' explicitly religious activity is sufficient to prevent any impermissible uses of direct Federal financial assistance.

The balance of § 87.3(b) would be unchanged by this proposed rule.

c. Proposed Section 87.3(c)

The Department proposes to revise § 87.3(c), which clarifies that faith-based organizations receiving Federal financial assistance may do so while fully retaining their religious character. Specifically, the Department proposes to change ''faith-based or religious organization'' to ''faith-based organization'' for the reasons described above.

The Department also proposes to explain, in the first sentence of § 87.3(c), the protections that faith-based organizations maintain against being compelled to change their religious identity or mission as a result of accepting direct Federal financial assistance, by explicitly recognizing that faith-based organizations retain their autonomy, right of expression, and religious character—in addition to the present statement that faith-based organizations retain their independence from Federal, state, and local governments. The Department additionally proposes to amend the clause, ''including the definition, practice, and expression of its religious beliefs,'' to ''including the definition, development, practice, and expression of its religious beliefs.'' The added term ''development'' clarifies that faith-based organizations that receive Federal financial assistance can continue the development of their religious beliefs, and not merely expressions or practice of their religious beliefs. The Department does not propose to change the phrase ''religious character'' to ''religious affiliation or exercise'' as proposed in § 87.3(a), because this sentence already explicitly references the autonomy, definition, development, practice, and expression of religious beliefs.

The Department proposes to delete the clause, ''provided that it does not use direct financial assistance from an HHS awarding agency (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)'' as redundant. The scrupulous repetition of the restrictions placed on faith-based entities each time the Department explains what they are free to do gives the impression that the Department is conflicted about the participation of such entities. The Department welcomes the participation of faith-based entities in its programs.

The Department also proposes to change the sentence, ''A faith-based or religious organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without removing religious art, icons, scriptures, or other religious symbols,'' to ''A faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols.'' The proposed addition of the terms ''concealing'' and ''altering'' would clarify that the rule protects against not only the removal of religious items, but also seemingly less burdensome or permanent actions such as concealing or altering those items. This proposed addition would further explain the freedom that faith-based entities have to receive federal funding and operate without interference with their religious mission, and that federal funding is not a pretext for the government to interfere with the religious mission of a faith-based entity.

In the third sentence of § 87.3(c), the Department proposes to insert reference to the fact that, by virtue of the receipt of federal financial assistance, a faith-based organization would not lose the protections of law described in the Attorney General's Memorandum on Federal Law Protections for Religious Liberty. The Attorney General's memorandum speaks directly to the protections of Federal statutory and constitutional law with respect to faith-based organizations that seek to participate in governmental programs.

The Department also proposes to modify the statement (in that same sentence) that a faith-based organization may ''select its board members on a religious basis'' to ''select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization.'' This proposed change would provide greater clarity as to the nature of faith-based organizations' right to select board members on a religious basis.

Finally, the Department proposes to delete the clause, ''in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities'' as redundant. This redundancy risks giving faith-based entities the impression that there are conditions on the preceding language, which could have a chilling effect on their participation.

d. Proposed Section 87.3(d)

The Department proposes to revise § 87.3(d) to clarify when an entity receiving Federal financial assistance may operate in a religion-specific manner.

The Department proposes to change the applicability description, in the first sentence of § 87.3(d), from ''an organization that participates in any programs funded by financial assistance from an HHS awarding agency'' to ''an organization that receives direct or indirect Federal financial assistance.'' Mere participation in programs that are funded by the government does not implicate § 87.3(d), but rather it is the receipt of Federal financial assistance that implicates § 87.3(d).

The Department also proposes to remove the word ''outreach'' from the first sentence of § 87.3(d) to avoid violating the First Amendment rights of recipients. The use of ''outreach'' in the present § 87.3(d) is ambiguous, and could be read to prohibit an organization from providing information about its programs in contexts that have primarily religious audiences. For

example, the present § 87.3(d) could be read to prohibit a church from including an addiction assistance program that receives Federal financial assistance in a list of church programs provided in a church newsletter if that newsletter primarily reaches church members, even though the church may be advertising its addiction assistance program in non-religious contexts as well. Prohibiting a house of worship from providing information about programs to its members impermissibly interferes with its free speech rights and its right to internal governance.

The second sentence of § 87.3(d) provides that ''an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.'' The Department proposes to amend this sentence by adding the clause, ''and may require attendance at all activities that are fundamental to the program.'' The proposed addition of this clause would clarify the previous statement and ensure that a beneficiary of indirect Federal financial assistance remains free to choose to participate in a program that includes a mandatory religious element. *See Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002)); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

e. Proposed Section 87.3(e)

The Department proposes to revise § 87.3(e) to use language consistent with that used in the rest of part 87 and to ensure that assurance or notice requirements are not imposed on faith-based organizations that are not imposed on other organizations. Specifically, the Department proposes to change the first sentence, ''No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by an HHS awarding agency or a State or local government in administering financial assistance from the HHS awarding agency shall require only faith-based or religious organizations to provide assurances that they will not use monies or property for explicitly religious activities,'' to ''No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations.'' This revision is necessary to ensure that faith-based organizations are not subject to additional burdens not required of non-faith-based organizations. Requiring that faith-based organizations provide assurances or notices that are not required of other organizations, solely distinguished by the organizations' being faith-based or not, may violate the Religion Clauses of the First Amendment.

For reasons described above and to use consistent language throughout part 87, the Department also proposes to change references, in § 87.3(e), to ''religious organizations'' or ''faith-based or religious organizations'' to ''faith-based organizations'' and to use the phrase ''religious affiliation or exercise'' instead of ''religious character or affiliation.''

The Department also proposes to recognize that requirements on organizations to carry out particular program requirements is subject to required or permitted accommodations, by inserting a parenthetical ''(except where modified or exempted by any required or appropriate accommodations)'' into the third sentence of § 87.3(e). This proposed addition would not be a substantive change; such accommodations may or must already be granted when permitted or provided for by law, but the inclusion of an explicit recognition of this legal protection ensures that protected organizations are aware that such legal protections exist. *See Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017). The Department notes that the nature of particular religious accommodations and the conditions under which such accommodations may or must be provided varies dependent on relevant statutes and contexts. For instance, RFRA ''requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program'' (principle 14 of the Attorney General's Memorandum on Religious Liberty), while Title VII's employment nondiscrimination protections require employers to provide religious accommodations ''except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business'' (principle 17 of the Attorney General's Memorandum on Religious Liberty). Because of the diverse religious accommodations that may be implicated, the Department is unsure whether including a definition of ''religious accommodation'' would provide clarity or confusion. The Department solicits comment on whether the rule should include a definition of ''religious accommodation,'' and, if so, how the Department should define the term.

f. Proposed Section 87.3(f)

The Department proposes to revise § 87.3(f) to use language consistent with that used in the rest of part 87, to clarify the meaning of the religious hiring exemption, and to provide further information about statutory provisions that impose certain nondiscrimination requirements on all recipients in particular programs. Specifically, for the reasons described above, the Department proposes to use the term ''faith-based organization'' instead of ''faith-based or religious organization'' in § 87.3(f).

The Department also proposes to clarify, by revising the statutes cited in section 87.3(f) to include 42 U.S.C. 2000e–2 and 42 U.S.C. 12113(d)(2) and by adding a new second sentence to section 87.3(f), that faith-based organizations may select their employees ''on the basis of their acceptance of or adherence to the religious tenets of the organization.'' This proposed clarification is based on those statutory descriptions of religious employment exemptions and ensures that faith-based organizations understand the scope of the religious employment exemption. *See* 42 U.S.C. 12113(d)(2).

The Department additionally proposes to revise the statement, in the current second and third sentences of section 87.3(f), regarding independent statutory requirements with respect to discrimination in employment, to more generally provide notice that particular programs may have independent statutory requirements that are applicable to all recipients and to expand the suggestion that organizations consult with the appropriate HHS awarding agency with respect to how these independent requirements affect their participation in government programs and how they interact with other constitutional or statutory protections. To accomplish this revision, the Department proposes to delete the present second sentence of section 87.3(f) and to expand the third sentence of section 87.3(f) to make clear

that the suggestion of consulting with the appropriate HHS awarding agency program office extends to questions ''in light of any additional constitutional or statutory protections or requirements that may apply.'' *See* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

g. Proposed Section 87.3(g)

The Department proposes to revise § 87.3(g) to use language consistent with that used in the rest of part 87 and to avoid discriminating against certain non-profit organizations that maintain sincerely held religious beliefs against registering as § 501(c)(3) entities. Specifically, for the reasons described above, the Department proposes to use the term ''faith-based organization'' instead of ''faith-based or religious organization'' in § 87.3(g). The Department also proposes to recognize that organizations that can establish that they would otherwise qualify as a nonprofit organization but that abstain from applying for a determination as tax-exempt under section 501(c)(3) of the Internal Revenue Code for religious reasons are nevertheless entitled to participate in programs that are limited to nonprofit organizations. The Department proposes to do this by adding § 87.3(g)(5) to provide that, if an HHS program requires an applicant to establish that it is a nonprofit organization, it is permissible to submit, ''[f]or an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit under any of paragraphs (g)(1) through (g)(4) of this section.''

h. Proposed Deletion of Current Section 87.3(i)

The Department proposes to delete § 87.3(i), which requires that faith-based organizations—and only faith-based organizations—provide written notice to beneficiaries and potential beneficiaries of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activities must be voluntary and that they must be provided separately from the Federally funded activities, and that beneficiaries may report violations. The Department proposes to delete section 87.3(i) to comport with the new direction of Executive Order 13831 and to avoid violating the First Amendment to the U.S. Constitution. *See Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018).

Present sections 87.3(j) and (k) require faith-based recipients of domestic direct social service program assistance to undertake reasonable efforts to identify an alternative provider if a beneficiary or prospective beneficiary objects to the religious character of the faith-based organization and, if such an alternative provider is available, to refer the beneficiary to an identified alternative provider and to make a record of the referral. If an alternative provider is not available, the faith-based organization must so notify the recipient or the HHS awarding agency. The Department proposes to delete sections 87.3(j) and (k) to comport with the new direction of Executive Order 13831 and to avoid violating the First Amendment to the U.S. Constitution. *See Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018).

i. Proposed Section 87.3(i)

The Department proposes to renumber § 87.3(*l*) as § 87.3(i) and to revise § 87.3(i) as newly redesignated by clarifying that it applies to direct Federal financial assistance and by rearranging the clauses for better clarity.

j. Proposed Section 87.3(j)

The Department proposes to add a new § 87.3(j) to ensure that all faith-based organizations are treated equally, regardless of whether they are affiliated with a historic or well-established denomination or are not affiliated with such a denomination. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017). New § 87.3(j) would provide that ''[n]either the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.''

3. Appendix A and Appendix B to Part 87

The Department proposes to add a new Appendix A and Appendix B to provide language that all HHS awarding agencies would include in their notices or announcements of award opportunities (Appendix A) and in their notices of awards or contracts (Appendix B). The texts of these appendices are intended to provide notices to faith-based organizations of their legal protections and obligations with respect to their application for and receipt of HHS awards.

II. Regulatory Impact Analysis

The Department has examined the impacts of the proposed rule as required by Executive Order 12866 on Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993); Executive Order 13563 on Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011); Executive Order 13132 on Federalism, 64 FR 43255 (Aug. 4, 1999); Executive Order 13175 on Tribal Consultation, 65 FR 67249 (Nov. 6, 2000); Executive Order 13771 on Reducing Regulation and Controlling Costs, 82 FR 9339 (Jan. 30, 2017); the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 847 (Mar. 29, 1996); the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995); the Regulatory Flexibility Act, Public Law, 96–354, 94 Stat. 1164 (Sept. 19, 1980); Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (Aug. 16, 2002); Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, 45 FR 72995 (Nov. 2, 1980), the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.;* and the Plain Writing Act, Public Law 111–274, 124 Stat. 2861 (Oct. 13, 2010).

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action''

as an action likely to result in a regulation that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

OIRA has determined that this proposed rule is a significant, but not economically significant, regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this proposed rule.

B. Executive Order 13563—Improving Regulation and Review

In accordance with section 1(b) of Executive Order 13563, the Department has (1) determined that the benefits of the proposed rule justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailored this proposed rule to impose the least burden on society, consistent with obtaining regulatory objectives, and taking into account—among other things and to the extent practicable—the costs of cumulative regulations; (3) selected, among alternative regulatory approaches, the approach that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) specified performance objectives, rather than the behavior or manner of compliance that regulated entities must adopt, to the extent feasible; and (5) identified and assessed available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

1. Assessment of Benefits and Burdens

The Department estimates that the proposed rule's overall economic impact will be *de minimis.* This proposed action would eliminate minor costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements on those organizations. The rule would also generate non-quantifiable benefits by adding clarity to part 87's requirements and by alleviating inconsistencies between the current part 87 and controlling case law and agency guidance.

The 2016 rule imposed various requirements solely on faith-based and religious organizations. Those requirements included the obligation to (1) give beneficiaries written notice information of their protections when seeking or obtaining services provided by a faith-based or religious organization and supported by directed HHS financial assistance,[2] (2) at the beneficiary's request, make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection,[3] (3) document such action,[4] and (4) in the event that the provider is unable to provide such a referral, notify the prime recipient entity from which the provider receives funds.[5] Less than two months after the effective date of the 2016 rule, the Supreme Court clarified in *Trinity Lutheran* that ''[t]he Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.''' (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520, 533 (internal quotation marks omitted)). The Attorney General issued a Memorandum on Religious Liberty in 2017 reaffirming this principle, noting, inter alia, that ''Government may not target religious individuals or entities for special disabilities based on their religion.''

The requirements imposed solely on faith-based and religious social service providers in the current part 87 constitutes special disabilities on faith-based and religious social service providers based on their status as faith-based or religious entities that are impermissible under the Free Exercise Clause as interpreted in *Trinity Lutheran* and other controlling Supreme Court precedents. Accordingly, the Department action in this proposed rule is necessary to better align 45 CFR part 87 with controlling case law and agency guidance on the subject of religious liberty.

Similarly, the 2016 rule implemented a definition of ''indirect Federal financial assistance'' that creates tension between part 87 and a controlling Supreme Court ruling, in a manner that is less protective of religious liberty than the ruling. In *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), the Supreme Court specifically declined to make its definition of indirect aid hinge on the proportion of faith-based or religious providers to secular providers in a particular area. Nonetheless, the 2016 rule adopted as a criteria for its definition of ''indirect Federal financial assistance'' the requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance they receive. 45 CFR 87.1(c)(1)(iii); *see* 81 FR 19355, 19407–19426 (2016). Accordingly, the changes that would be made by this proposed rule are necessary to better align 45 CFR part 87 with controlling case law in this respect as well.

The Department is also concerned that the current part 87 does not provide faith-based and religious organizations with adequate clarity regarding the protections afforded to them by Federal law. For instance, the current part 87 does not adequately explain to what extent the government is obligated to provide accommodations for such organizations. Part 87 also states that HHS awarding agencies, States, local governments, and other pass-through entities may not discriminate on the basis of a faith-based organization's religious ''character,'' which could be read to imply, incorrectly, under the canon of interpretation that expressio unius est exclusio alterius, that discrimination on the basis of an organization's religious exercise is permissible to the extent such exercise is distinct from its religious character.

The Department believes the only cost that could theoretically arise from the removal of part 87's referral requirements would be the opportunity cost borne by beneficiaries who request such a referral, but who do not receive one, of locating an alternative social service provider. However, nothing in this proposed rule would prevent a faith-based social service provider from making such a referral.

The 2016 rule estimated that 1,372 beneficiaries per year would request referrals from faith-based or religious social service providers. 81 FR 19403 (incorporating the Paperwork Reduction Act analysis performed in the proposed rule at 80 FR 47278). Although the 2016 rule has been in effect since May 4, 2016, the Department is not aware of having received any reports of any

[2] 45 CFR 87.3(i)(1).

[3] 45 CFR 87.3(j).

[4] 45 CFR 87.3(k).

[5] Id.

providers' inability to provide referrals to beneficiaries.

One possible explanation for the lack of such reports is that Department's estimate of 1,372 requests for referrals was accurate, yet all requested referrals were provided successfully, so no such report was ever necessary. However, the Department believes this is unlikely to be the case.

It is instructive to consider the Department's experience with the referral reporting requirements in the Charitable Choice regulations governing the substance abuse service programs funded by the Substance Abuse and Mental Health Services Administration (SAMHSA) under titles V and XIX of the Public Health Service Act, 42 U.S.C. 290aa *et seq.* and 42 U.S.C. 300x–21 *et seq.*[6] Those regulations require recipients of assistance from SAMHSA to provide notice to beneficiaries of their ability under statute to request an alternative service provider, and to report *all* referrals—not just referrals that are requested, but that the provider cannot provide—to the appropriate Federal, State, or local government agency that administers the SAMHSA program.[7] To date, SAMHSA has not received any reports of referral by recipients or subrecipients. The Department concludes, based on the absence of such reports, that few if any referrals have been requested.

SAMHSA's grants for substance abuse service programs fund 670 providers per year. The Department is unaware of any reason that the proportion of faith-based or religious organizations receiving such grants from SAMHSA would be materially different from the proportion of faith-based organizations receiving funds subject to this rulemaking. Using the 2016 rule's estimate that 10% of providers subject to this rulemaking are faith-based or religious organizations, the Department estimates that 67 of SAMHSA-funded providers are faith-based in nature. The Department does not believe that any differences between the nature of SAMHSA's substance abuse service programs and the social service programs subject to this rulemaking could generate a material difference in the frequency of requests for referrals to alternative providers.

In light of the absence of any reports under the 2016 rule of inability to provide referrals to alternative providers, and the absence of any reports of any referrals at all under the SAMHSA Charitable Choice regulations since their issuance in 2003, the Department believes that the 2016 rule dramatically overestimated the number of requests by beneficiaries for referrals from faith-based social service providers. The Department believes, instead, that such requests are very rare, if in fact they occur at all. This conclusion is also supported by the lack of any evidence cited in the 2016 rule to indicate that beneficiaries were in fact requesting such referrals. To the extent such requests do occur, the Department assumes that some percentage of faith-based social service providers will nonetheless provide them, even if not required to do so by law or regulation. The Department accordingly estimates that the total costs this proposed rule will impose on beneficiaries are de minimis, and possibly zero.

The Department requests comment on the assumptions and methods of its estimate of the costs of the proposed rule, including any data, studies, or reports that may assist the Department in quantifying the proposed rule's costs.

Consistent with the Department's reasoning that the proposed rule's elimination of the 2016 rule's referral requirements would, at most, generate only de minimis costs on beneficiaries, the Department estimates that the removal of the referral requirements would, at most, generate only de minimis benefits for faith-based social service providers.

The Department notes a quantifiable cost savings of the proposed removal of the notice requirements, which the Department previously estimated as imposing a cost of no more than $100 per organization per year for the notices. *See* 80 FR 47277; 81 FR 19402. The Department invites comment on any data by which it could assess the actual implementation costs of the notice requirement—including any estimates of staff time spent on compliance with the requirement, in addition to the printing costs for the notices referenced above—and thereby accurately quantify the cost savings of removing these requirements.

The primary benefit expected from the proposed rule is a non-quantifiable benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the Constitution, the principles of free exercise articulated in *Trinity Lutheran,* and the Attorney General's Memorandum on Religious Liberty. The Department also recognizes a non-quantifiable benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the federal government.

2. Cost-Effective Design

The Department has concluded that the proposed rule utilizes the most cost-effective means of achieving the proposed rule's objectives.

3. Objectives

The Department has concluded that the proposed rule cannot feasibly set performance objectives.

4. Regulatory Alternatives

The Department carefully considered alternatives to this proposed rule, including making no or more limited changes, but concluded that the proposed approach is the best means of achieving the primary goals of the rule—protecting religious liberty, and reconciling the tensions between the current part 87, on the one hand, and the constitutional protection of religious exercise, as set forth in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, on the other.

The crux of the Department's concern with the current part 87 is that it places special obligations on faith-based and religious organizations based solely on their faith-based or religious character. The proposed rule corrects this problem by removing such obligations. The clearest alternative approach would have been to place the same obligations on secular social service providers as well. However, as demonstrated above, the Department is unaware of any evidence that the notice and referral requirements of the current part 87 serve any actual need or desire of the beneficiaries of the programs subject to part 87. Therefore, the Department determined that it would be inappropriate to apply those requirements to more entities.

The Department also considered whether to require the prime recipients of funds subject to part 87 to ensure that beneficiaries are informed of their options for alternative providers. However, for the same reason—the apparent lack of any significant desire for such information among beneficiaries—the Department determined that the imposition of such a regulatory burden could not be justified.

The Department invites comment on its proposed approach, as well as other approaches to ensure that the Department's funding of social service programs respects religious freedom, while serving the needs of beneficiaries of those programs.

[6] 42 CFR 54, 54a.

[7] 42 CFR 54.8(c)(4), 54a.8(c)(iv).

C. Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an E.O. 13771 deregulatory action.

D. Executive Order 13132—Federalism

This proposed rule is deregulatory in nature—the purpose of the rule is to remove Federal restrictions and requirements, not to impose them. If, however, a state has enacted restrictions or requirements similar to those previously mandated by the Federal government, this rule does not preempt them, nor does it prohibit their enforcement. The Department has determined that each change proposed by this rule would not have federalism implications, impose substantial direct compliance costs on State or local governments that are not required by statute, or preempt State law, within the meaning of the Executive Order 13132.

E. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has assessed the impact of this proposed rule on Indian tribes and determined that this proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In accordance with E.O. 13563, the Department also has determined that this proposed (de)regulatory action would not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

F. Executive Order 12988—Civil Justice Reform

The provisions of this proposed rule would not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. If finalized as proposed, the rule would not have retroactive effect.

G. Regulatory Flexibility Act

The Department has determined that this rule would not have a significant economic impact on a substantial number of small entities. Although the Department assumes that most, if not all, of the entities affected by this proposed rule meet the definition of a small entity, the Department estimates the proposed rule's effects on any particular entity's revenue would be a $100 cost savings per year, based on the proposed elimination of the notice requirement. (As discussed above, the Department estimates the effects of the proposed rule's elimination of the referral requirement would be de minimis and possibly zero.) The Department considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact of revenue on at least five percent of small entities. This estimated impact of $100 in cost savings per year per entity is well below the threshold for a significant impact on a small entity's revenue—the impact would only meet this threshold for entities with revenues of less than $3,334 per year; and, in any event, the impact is positive rather than negative.

Accordingly, the Secretary certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act, this certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

H. Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

I. Unfunded Mandates Reform Act

The Department concludes that the requirements of the Unfunded Mandates Reform Act of 1995 are not triggered by this proposed rule, because, if finalized, this proposed rule would not result in an expenditure by State, local, and tribal governments in any year that meets or exceeds that, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). Furthermore, the Unfunded Mandates Reform Act does not apply to proposed rules enforcing laws prohibiting discrimination on the basis of religion. 2 U.S.C. 1503(2).

J. Plain Writing Act

The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. The Department seeks any comments on whether the rule could be revised to give full effect to issues of legal interpretation with language that is simple, straightforward, transparent, and clear.

List of Subjects

45 CFR Part 87

Administrative practice and procedure, Claims, Courts, Government employees, Religious discrimination.

45 CFR Part 1050

Grant programs—social programs.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 87 and 1050 as follows:

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

■ 1. The authority citation for part 87 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Revise § 87.1 to read as follows:

§ 87.1 Definitions.

The following definitions apply for the purposes of this part.

(a) *Direct Federal financial assistance, Federal financial assistance provided directly,* or *direct funding* means financial assistance received by an entity selected by the government or a pass-through entity (as defined in this part) to carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to *Federal financial assistance* will be deemed to be references to *direct Federal financial assistance,* unless the referenced assistance meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly.*

(b) *Directly funded* means funded by means of Direct Federal financial assistance.

(c) *Indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider.

(d) *Federal financial assistance* does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

(e) *Pass-through entity* means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or

grantee and distributes that assistance to other organizations that, in turn, provide government funded social services.

(f) *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients, but does include pass-through entities.

(g) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

■ 3. Revise § 87.3 to read as follows:

§ 87.3 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, and considering any permissible accommodation, to participate in any HHS awarding agency program or service for which they are otherwise eligible. The HHS awarding agency program or service shall provide such accommodation as is consistent with federal law, the Attorney General's Memorandum of October 6, 2017 (Federal Law Protections for Religious Liberty), and the Religion Clauses of the First Amendment to the U.S. Constitution. Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service shall, in the selection of service providers, discriminate against an organization on the basis of the organization's religious affiliation or exercise. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendix A and B of this part.

(b) Organizations that receive direct financial assistance from an HHS awarding agency may not engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct financial assistance from the HHS awarding agency, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the HHS awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HHS's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based organization that participates in HHS awarding-agency funded programs or services will retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols. Such a faith-based organization retains its authority over its internal governance, and it may retain religious terms in its name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its mission statements and other governing documents. In addition, a faith-based organization that receives financial assistance from the HHS awarding agency does not lose the protections of law.

Note 1 to paragraph (c): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing federal law protections for religious liberty).

(d) An organization, whether faith-based or not, that receives Federal financial assistance shall not, with respect to services or activities funded by such financial assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, a faith-based organization receiving indirect Federal financial assistance need not modify any religious components or integration with respect to its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, whether faith-based or not, that participate in HHS awarding agency programs or services must carry out eligible activities in accordance with all program requirements (except where modified or exempted by any required or appropriate religious accommodations) including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall disqualify faith-based organizations from participating in the HHS awarding agency's programs or services because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious affiliation or exercise.

(f) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in the Civil Rights Act of 1964, 42 U.S.C. 2000e–1 and 2000e–2 and the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2), is not forfeited when the faith-based organization receives direct or indirect Federal financial assistance from an HHS awarding agency. An organization qualifying for such exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization. Recipients should consult with the appropriate HHS awarding agency program office if they have questions about the scope of any applicable requirement, including in light of any additional constitutional or statutory protections or requirements that may apply.

(g) In general, the HHS awarding agency does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HHS awarding agency programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit

status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements. In HHS awarding agency programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;

(4) Any item described in paragraphs (g)(1) through (g)(3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or

(5) For an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under any of paragraphs (g)(1) through (g)(4) of this section.

(h) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement HHS awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this part apply irrespective of whether such funds are commingled with Federal funds or segregated.

(i) Decisions about awards of direct Federal financial assistance must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of a recipient organization, and must be free from political interference or even the appearance of such interference.

(j) Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(k) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

■ 6. Add Appendix A and Appendix B to Part 87 to read as follows:

Appendix A to Part 87—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and, subject to the protections and requirements of part 87 and 42 U.S.C. 2000bb *et seq.,* the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious affiliation or exercise.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment of the U.S. Constitution, the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), the Coats-Snowe Amendment (42 U.S.C. 238n), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1(a) and 2000e–2(e)), the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2), Section 1553 of the Patient Protection and Affordable Care Act (42 U.S.C. 18113), the Weldon Amendment (*e.g.,* Consolidated Appropriations Act, 2019, Pub. L. 115–245, Div. B, sec. 507(d)), or any related, successor, or similar Federal laws or regulations. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department to engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Appendix B to Part 87—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the First Amendment of the U.S. Constitution, the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), the Coats-Snowe Amendment (42 U.S.C. 238n), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1(a) and 2000e–2(e)), the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2), Section 1553 of the Patient Protection and Affordable Care Act (42 U.S.C. 18113), the Weldon Amendment (*e.g.,* Consolidated Appropriations Act, 2019, Pub. L. 115–245, Div. B, sec. 507(d)), or any related, successor, or similar Federal laws or regulations. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department to engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

PART 1050—CHARITABLE CHOICE UNDER THE COMMUNITY SERVICES BLOCK GRANT ACT PROGRAMS

■ 7. The authority citation for part 1050 continues to read as follows:

Authority: 42 U.S.C. 9901 *et seq.*

■ 8. In § 1050.3, amend paragraph (h) by removing ''87.3(i) through (l)'' and adding in its place ''87.3(i) through (j)''.

Dated: December 9, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–26923 Filed 1–16–20; 8:45 am]

BILLING CODE 4150–27–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 200106–0003]

RIN 0648–BJ24

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ice Roads and Ice Trails Construction and Maintenance Activities on Alaska's North Slope

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from Hilcorp Alaska, LLC (Hilcorp) and Eni US Operating Co. Inc. (Eni) for authorization to take small numbers of marine mammals incidental to ice road and ice trail construction, maintenance, and operation in Alaska's North Slope, over the course of five years (2020–2025). As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 18, 2020.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2019–0129, by any of the following methods:

- *Electronic submissions:* submit all electronic public comments via the Federal eRulemaking Portal, Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0129,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shane Guan, 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:

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to Hilcorp and Eni's ice roads and ice trails construction and maintenance activities on Alaska's North Slope.

We received an application from Hilcorp and Eni requesting five-year regulations and authorization to take ringed seals. Take would occur by Level B, Level A harassment and serious injury and/or mortality of a few individual seals incidental to ice roads and ice trails construction and maintenance. Please see "Background" below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce 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 for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the "least practicable adverse impact" on the affected species or stocks and their habitat (see the discussion below in the "Proposed Mitigation" section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations and for any subsequent letters of authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Hilcorp and Eni's construction activities. These measures include:

- No initiation of ice road or trail construction if a ringed seal is observed within 150 ft of the action area after March 1 through May 30 of each year.
- Requiring monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities.

Background

The MMPA prohibits the "take" of marine mammals with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as

''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization (IHA)) with respect to potential impacts on the human environment.

Accordingly, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts associated with the proposed rule.

NMFS' draft EA is available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

We will review all comments submitted in response to this document as we complete the NEPA process, prior to making a final decision on the incidental take authorization request.

Summary of Request

On December 2, 2018, NMFS received a joint application from Hilcorp and Eni requesting authorization for take of marine mammals incidental to construction activities related to ice roads and ice trails in the North Slope, Alaska. The requested regulations would be valid for five years, from February 15, 2020, through February 14, 2025. Hilcorp and Eni plan to conduct necessary work, including use of heavy machinery on ice, to facilitate access to North Slope offshore oil and gas facilities. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of sound, human presence on ice habitat, and interactions with heavy machinery, thereby resulting in incidental take, by Level B harassment and serious injury or mortality. NMFS provided questions and comments to Hilcorp and Eni after receiving the initial application regarding the scope of the project and impact analysis. Hilcorp and Eni submitted a modified request on May 21, 2019 and NMFS deemed the application adequate and complete on May 31, 2019.

Description of Proposed Activity

Overview

Hilcorp and Eni conduct oil and gas operations at Northstar Production Facility (Northstar) and Spy Island Drillsite (SID), respectively, in coastal Beaufort Sea, Alaska. During the ice-covered season, Hilcorp constructs annual ice roads and trails to connect and allow access between West Dock and Northstar. Similarly, Eni builds and utilizes an ice road connecting the Oliktok Production Pad (OPP) and SID. Eni also builds an annual ice road from shore to the Oooguruk Drill Site (ODS) (Figures 1–4). This regulation and the implementing LOAs would authorize takes of marine mammals incidental to Hilcorp and Eni's ice roads and ice trails construction during the ice-covered season on Alaska's North Slope.

Dates and Duration

Both Hilcorp and Eni generally begin constructing sea ice roads and ice trails as early as possible, usually by late December depending on weather. Maintenance and use of the ice roads and trails continue generally through mid-May when the ice becomes too unstable to access. Depending on the weather, from the initial surveying until the ice is thick enough to allow travel by wheeled vehicles, ice road construction takes about six weeks.

Specific Geographic Region

Northstar, an artificial gravel island, is located in State of Alaska coastal waters about 9.7 km (6 mi) offshore from Point Storkersen in the Beaufort Sea (Figure 1). Water depth at the island is about 12 ft (39 ft). This region is covered by landfast ice in winter and with water depths greater than 3 m (10 ft) .

The 0.05 square kilometer [km^2] (11-acre) SID is also an artificial, gravel island constructed in shallow (1.8–2.4 m, 6–8 ft), State of Alaska coastal waters approximately 4.8 km (3 mi) north of Oliktok Point and just south of the Spy Island barrier island (Figure 2). While SID is situated in water depths considered unsuitable for ringed seals, each year a crack or lead has developed in the road between OPP and SID.

The ODS consists of a 0.024 km^2 (6-acre) gravel drillsite approximately 8 km (5 mi) offshore in 1.4 m (4.5 ft) of water (Figures 3 and 4). The site is connected to an onshore facility by a flowline system consisting of a 9.2 km (5.7 mi) subsea buried flowline bundle which transitions onshore to a 3.7 km (2.3 mi) traditional North Slope aboveground flowline support system.

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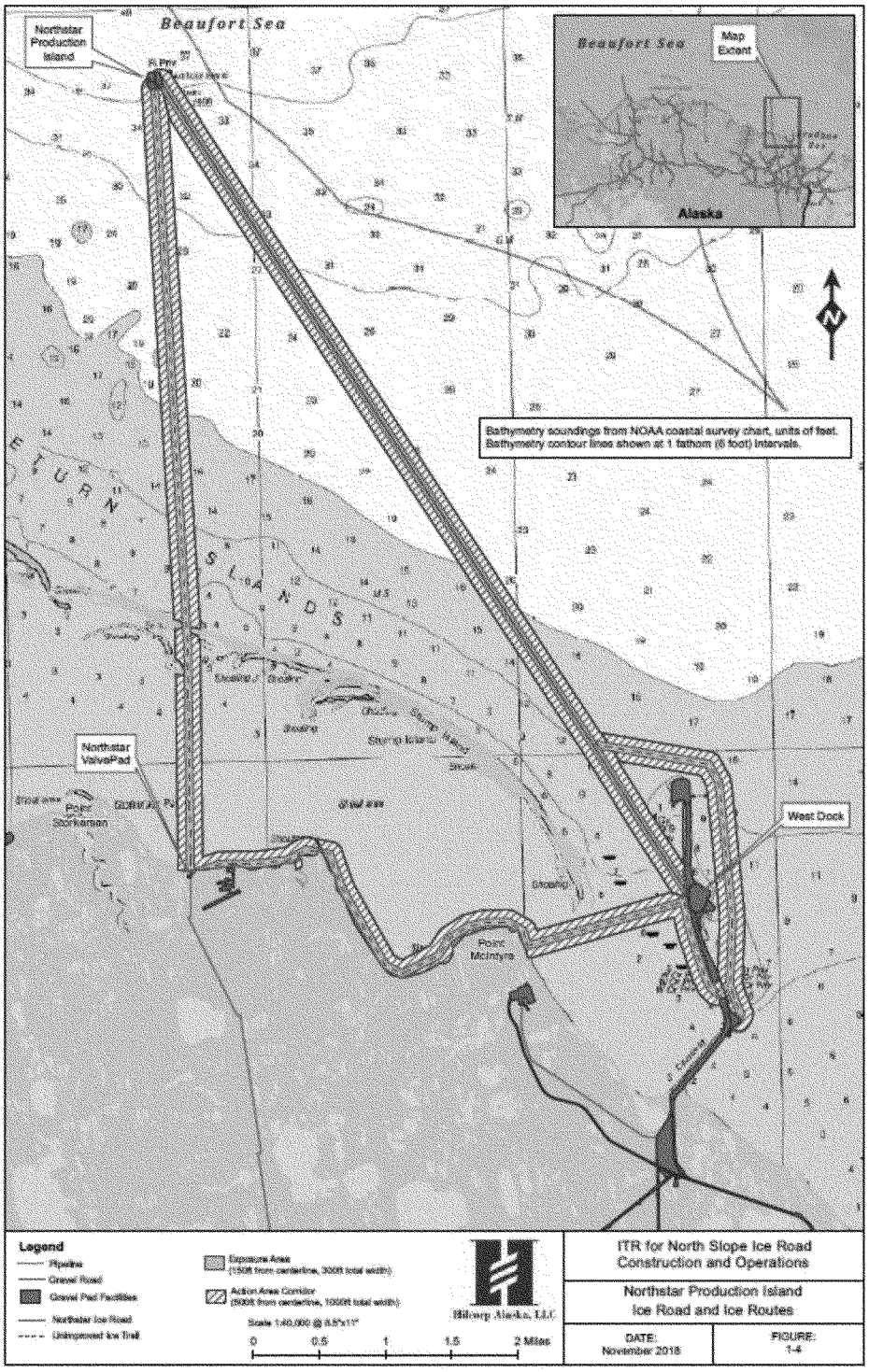

Figure 1. Northstar Production Island Ice Road and Ice Trails

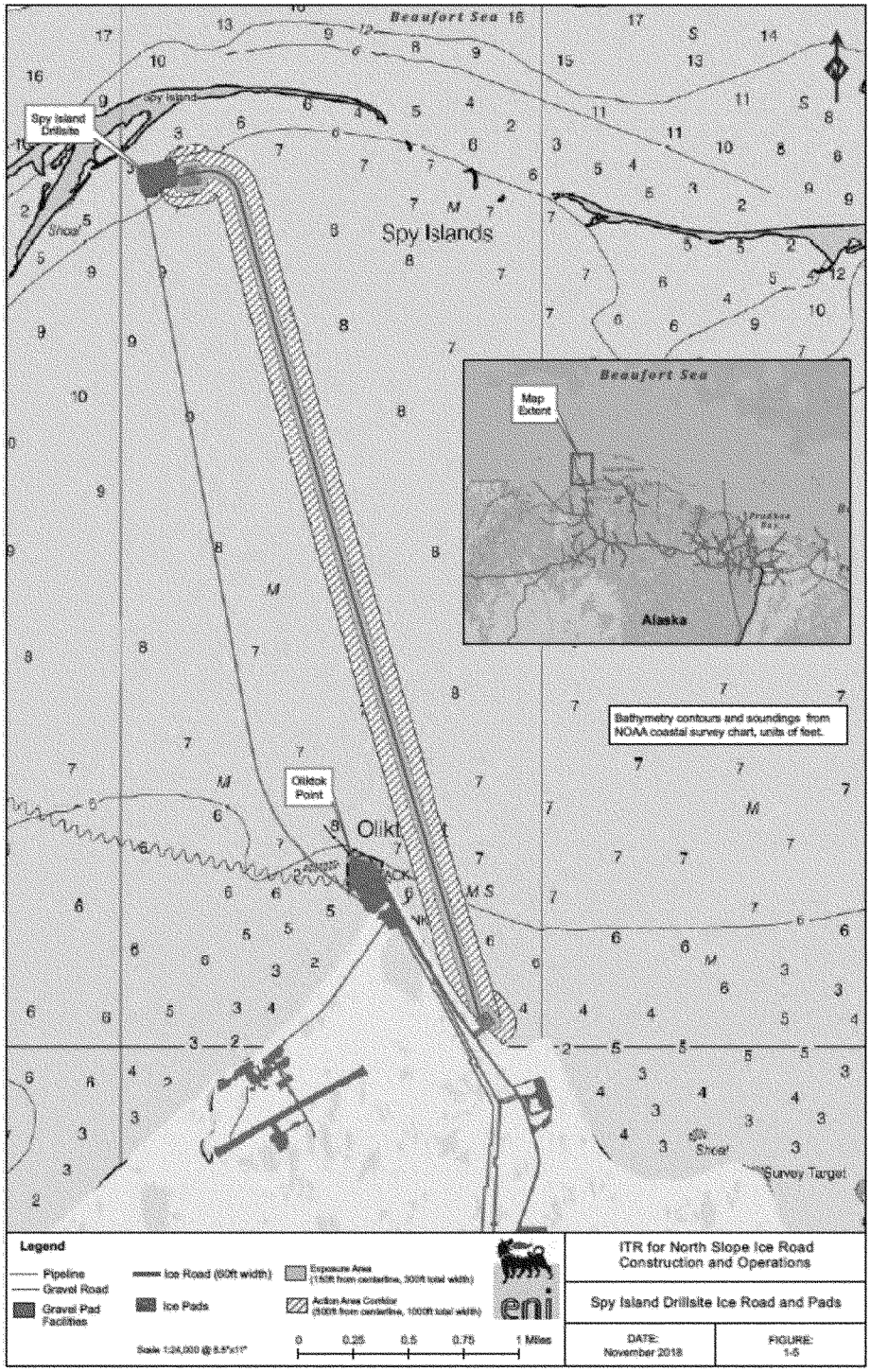

Figure 2. SID Ice Road/Trail and Ice Pads

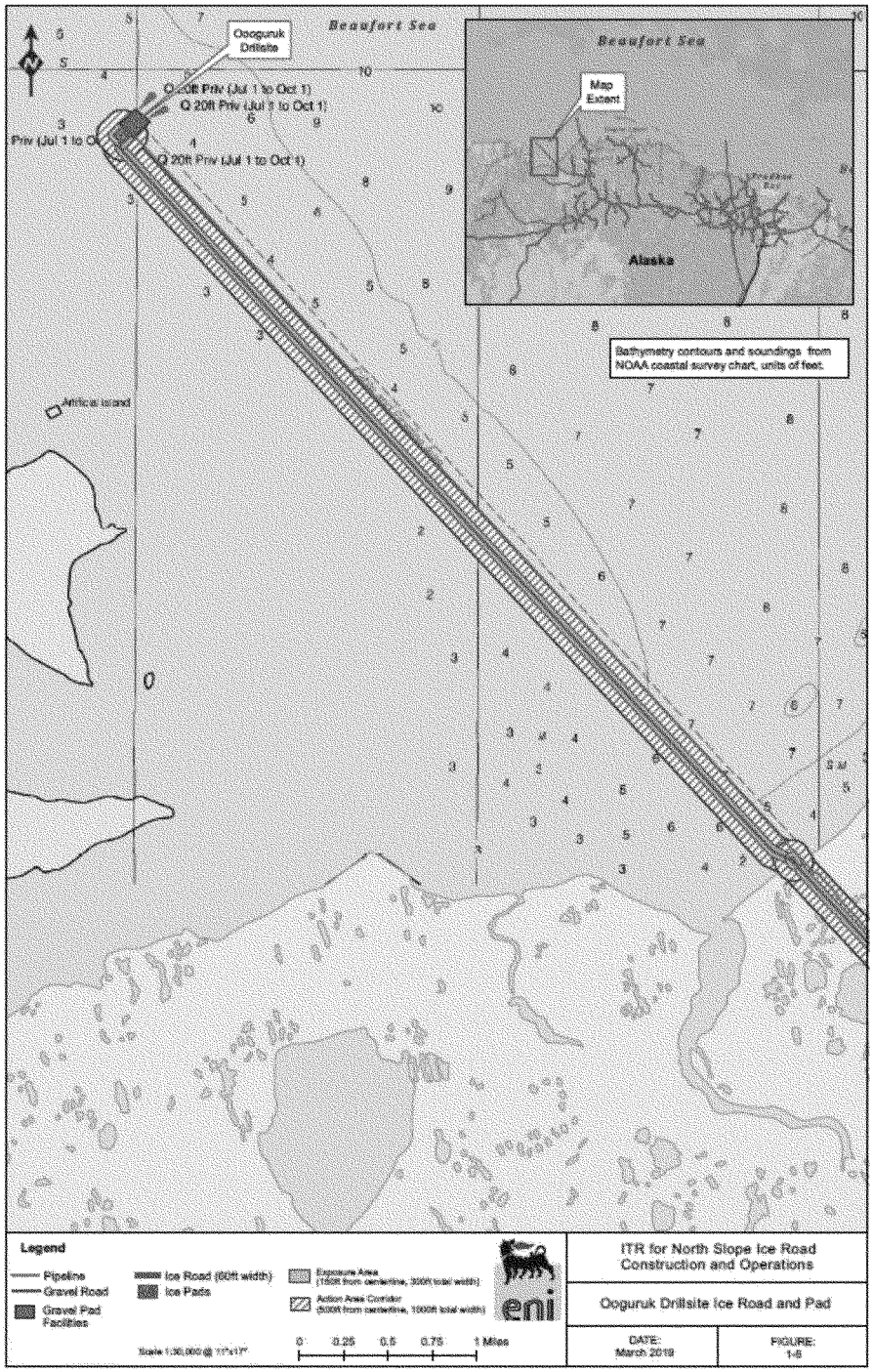

Figure 3. Oooguruk Ice Road

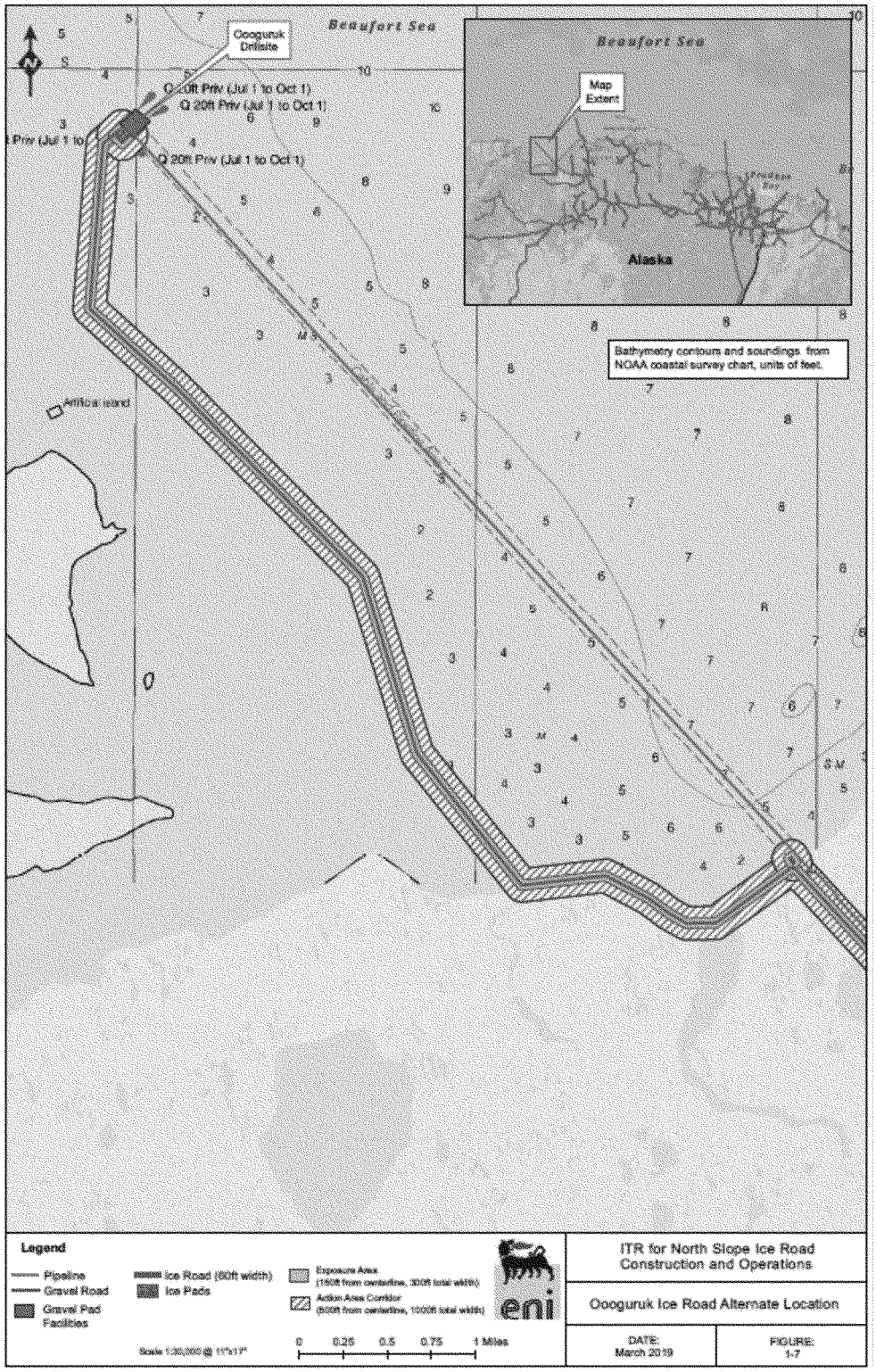

Figure 4. Oooguruk Ice Road Alternate Location

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Detailed Description of Specific Activity

Hilcorp: Northstar to West Dock

Ice Road Construction, Use, and Maintenance

Each year during the ice-covered season an approximately 11.7 km (7.3 mi) long ice road is constructed between Northstar and the Prudhoe Bay facilities at West Dock to transport personnel, equipment, materials, and supplies (Figure 1). Ice roads allow standard vehicles such as pick-up trucks, SUVs, buses and other trucks to be used to transport personnel and equipment to and from the island during the ice-covered period.

In some years depending on operational needs and weather conditions, Hilcorp may elect to not build the main improved ice road. In this case, a primary ice trail that can support only tracked, lighter-weight vehicles would be built in the location of the improved ice road shown on Figure 1. However, to cover all scenarios, Hilcorp assumes that an ice road would be built in each year for the next five years.

In water deeper than 3 m (10 ft), the ice must be approximately 2.4 m (8 ft) thick to support construction equipment. Ice road construction activities occurs 24 hours a day, 7 days a week during the construction phase and are only halted in unsafe conditions such as high winds or extremely low temperatures. The ice roads are typically constructed by specially-designed pumps with ice augers. Seawater for creating the offshore ice road is obtained by drilling holes through the existing sea ice using augers and pumping salt water to flood the ice surface. The rolligons (vehicles with large low-pressure tires) move along the road alignment while flooding the surface. Water trucks are used to spray a freshwater cap over the thickened sea ice to provide durability.

Following construction, ice road surfaces are maintained using graders with snow wings and blowers, or front-end loaders with snow blower attachments. Snow can also be cleared by personnel with snow blowers. When snow blowing, wind direction is used to assist in dispersing the blown snow over a large area so that large berms or piles are not created. Delineators may be used to mark the roadway in 15 m (50 ft) increments down the centerline of the road, and at no more than 0.4 km (¼ mi) increments on both sides of the ice road to delineate the path of vehicle travel and areas to be maintained. Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, are clearly marked or mapped using Global Positioning System (GPS) coordinates of the locations.

The following steps are used to build the Northstar ice road:

- Clear snow using lighter-weight tracked vehicles;
- Grade or drag the ice to smooth the surface, incorporating rubble ice into the road or moving it outside of the expected road surface;
- Drill holes through floating ice along the planned ice road route using rolligons equipped with ice augers and pumps;
- Pump seawater from drilled holes over floating ice; and
- Flood the ice road. Flooding techniques are dependent on the conditions of the sea ice (*i.e.,* grounded vs. floating).

Grounded ice requires minimal freshwater flooding to either cap or repair cracks. Floating ice requires flooding with seawater until a desired thickness is achieved. Thickness of floating ice would be determined by the required strength and integrity of the ice. After achieving desired thickness, floating ice areas may then be flooded with fresh water to either cap or repair cracks. This technique minimizes the amount of freshwater used to obtain the desired thickness of the ice road. Hilcorp would use permitted freshwater sources if fresh water is needed to construct the Northstar ice roads. Water would be transported by truck from permitted freshwater sources via existing roads.

Ice Trails

Ice trails are unimproved access corridors used by Tuckers (a type of tracked vehicle that moves on snow), PistenBullys® (a type of tracked vehicle that moves on snow), snow machines, or similar tracked equipment. Seawater flooding of the entire trail and freshwater caps are not used. However, small rough areas of a trail may require minimal seawater flooding to allow tracked vehicles, rolligons, and the hovercraft (if needed) to travel along the corridor.

To construct the trail, snow machines and light-weight tracked vehicles are used to initially mark the corridor as soon as it is determined to be safe for access. Sea ice in the unimproved roads would be allowed to thicken through natural freeze up as the ice, and snow is packed down by larger tracked vehicles. Generally, snow removal or large surface modifications are not required for ice trails.

Hilcorp usually builds the following unimproved ice trails to Northstar:

- Along the pipeline corridor from the valve pad near the Dew Line site to Northstar (9.5 km, 5.93 mi),
- From West Dock to the pipeline shore crossing (grounded ice along the coastline (7.8 km,4.82 mi), and
- Two unimproved ice road paths from the hovercraft tent at Dockhead 2. One would go under the West Dock causeway bridge to Dockhead 3 (1.4 km, 0.86 mi) and the other would go around West Dock and intersect the main ice road north of the Seawater Treatment Plant (4.6 km, 2.85 mi).

In addition to these trails, Hilcorp may need to construct several shorter length trails into undisturbed areas to work around unstable and unsafe areas of ice as the season progresses. Due to safety considerations these work-around or detour trails may need to be constructed after March 1st. They are constructed similarly to the planned ice trails and are not flooded or capped with seawater or freshwater. Typically, these detours deviate approximately 23 to 46 m (75 to 150 ft) from the original road or trail to allow crews to safely go around soft spots or cracks.

Eni: Oliktok Production Pad to SID

Ice Road Construction, Use, and Maintenance

Each year Eni builds a single ice road and three ice pads. The ice road extends 6.8 km (4.2 mi) offshore from OPP to SID (Figure 2). This ice road has both supported on water (floating) and grounded ice sections; the first 244 m (800 ft) of the road from shore is grounded ice (*i.e.,* frozen to the bottom). In addition, Eni typically also builds two floating ice pad parking areas at SID: A 152 m by 6 m (500 ft by 200 ft) area located on the southeast side of SID, and a 91 m by 46 m (300 ft by 150 ft) area on the northeast side, and one grounded ice pad at the Oliktok Point end of the ice road.

Initial construction of the sea ice road begins with surveying and staking the route as soon as the ice is thick enough to support snow machines. The floating sections of the road are constructed using the free flood method; low pressure pumps flood the ice surface with seawater. A 7. 6 cm (3 in.) layer of water is applied, some of which may move to lower parts of the roadway. After the water has frozen, the next flood can be applied.

Small rolligon vehicles with augers and pumps are used for augering and flooding. Hand augers can be used to check the ice thickness. Ice needs to be 41 to 51 cm (16 to 20 in.) thick to support these vehicles. Rolligon tires distribute the load over a larger tire

print. Flooding operations occur 24 hours a day, 7 days a week during this phase. Once the ice is about 183 cm (72 in.) thick and determined to be able to support full loads, vehicles such as passenger trucks, vacuum trucks, drill trucks and other tractor plus trailer loads can use the ice road. Up until that time, only rolligon vehicles and tracked vehicles are used on the road. The maintained ice road width (including the shoulder areas) is 49 m (160 ft).

Rig mats are used to bridge small leads (fractures within large expanse of ice) and wet cracks during construction and maintenance. During maintenance activities, fresh water is used for road surfacing and repair. Once fully flooded and open to traffic, snow loads on the ice road must be managed. Snow on the ice road is cleared frequently and the width of the ice road (including the shoulder areas) is maintained at 49 m (160 ft). At the end of the ice road season, as temperatures and sun exposure increase, snow may be spread over the road surface to insulate and shade the ice surface, helping to preserve ice road integrity.

Ice Trails

Following the same general construction methods used at Northstar, Eni plans to build an unimproved ice trail just west of and parallel to the sea ice road corridor near SID. The ice trail is typically approximately 15–30 m (50–100 ft) west of the western edge of the ice road shoulder and is used when the ice road is being constructed. Once the ice road is open to regular traffic, the ice trail is not used. After March 1st, due to safety considerations, Eni may also need to use several shorter length trails in undisturbed areas to work around unstable and unsafe areas of ice as the season progresses. As described above, these work-around or detour trails allow PistenBullys® and other tracked vehicles to safely go around soft spots or cracks.

Eni: Oooguruk Ice Road

Ice Road Construction, Use, and Maintenance

A single ice road and staging area ice pad are required each year to operate the ODS. As shown in Figure 3, the typical or proposed ice road extends 8.9 km (5.5 mi) offshore to the ODS. An alternative ice road as shown on Figure 4 would be located in shallower water and, therefore, can be grounded and used earlier in the season. The alternative route extends 11.2 km (7 mi) offshore and is used in years when an early road completion is required or when extra heavy loads, such as a drilling rig is expected. Either ice road is up to approximately 10.7 m (50 ft) wide with a similar width shoulder area on each side. The shoulders of the road are used when traffic must periodically detour around equipment or in areas where ice road maintenance is occurring. In addition, a grounded ice pad staging area is constructed on the southwest edge of the ODS (see Figures 3 and 4). The dimensions of the staging area are approximately 180 by 140 m (600 by 450 ft).

The ODS is located in 1.2 to 1.8 m (4 to 6 ft)of water, and the area from the site to the shore generally becomes grounded landfast ice in winter. The typical and alternate ice road routes shown in Figures 3 and 4 would be located in grounded rather than floating ice. There is one small area near the Colville River that has an open lead for a short duration in December but freezes solid within a few weeks. The road is clearly marked with delineators and monitored routinely by Alaska Clean Seas and industry environmental coordinators. Ice bridges or rig mats are not required for construction or maintenance of the ice road or ice pad staging area.

Initial construction of the sea ice road begins with surveying and staking the route as soon as the ice is thick enough to support snow machines. Low pressure pumps are used to flood the ice surface with seawater. Small tractor vehicles with augers and pumps are used for augering and flooding. An initial layer of water is applied, some of which may move to lower parts of the roadway. After the water has frozen, the next flood can be applied. Flooding operations occur 24 hours a day, 7 days a week during this phase. Depending on weather and sea ice conditions, construction of the ice road typically begins in early December and is complete by February 1st.

The ODS operations do not require offshore ice trails. However, a coastal trail in very shallow water right off of the beach is occasionally needed between Oliktok and the ODS ice road to demobilize equipment after tundra travel has been closed.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' 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' website (*https://www.fisheries.noaa.gov/find*-species).

Table 1 lists all species with expected potential for occurrence in the Beaufort Sea 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 (2018). 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' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2018 SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019).

TABLE 1—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED 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 Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-; N	26,960 (0.05, 25,849)	801	139
Family Balaenidae:						
Bowhead whale	*Balaena mysticetus*	Western Arctic	E/D; Y	16,820 (0.052, 16,100)	161	46
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Beaufort Sea	-; N	39,258 (0.229, N/A)	Undet	139
Family Phocidae (earless seals)						
Ringed seal [4]	*Phoca hispida*	Alaska	T/D; Y	300,000 (NA, 170,000)	Undet	1,54
Spotted seal	*Phoca largha*	Alaska	-; N	461,625 (NA, 423,237)	12,697	329
Bearded seal [5]	*Erignathus barbatus*	Alaska	T/D; Y	301,836 (NA, 273,676)	Undet	557
Ribbon seal	*Histriophoca fasciata*	Alaska	-; N	184,695 (NA, 163,086)	9,785	3.9

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region#reports.* 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] Ringed seal estimate is based on surveys conducted in the Alaska Chukchi and Beaufort seas in the late 1990s and 2000, and in the U.S. portion of the Bering Sea in 2012. This is the best available information for use here.

[5] Bearded seal estimate is based on surveys conducted in the U.S. portion of the Bering Sea in 2012. This is the best available information for use here.

All species that could potentially occur in the proposed survey areas are included in Table 1. As described below, only the ringed seal temporally and spatially co-occurs with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. However, the temporal and/or spatial occurrence of the rest of the species listed in Table 1 is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

While ringed, spotted, and bearded seals are present in the Beaufort Sea during the open-water season, only ringed seals are likely to be in the nearshore environment during the ice-covered months. The other two species of ice seals only occur in the project area during the open-water season. Ribbon seal mostly occurs in the Chukchi Sea and western Beaufort Sea, and is considered as extra-limital in the project area. Therefore, the potential for encounters with bearded, spotted, and ribbon seals during ice road/trail construction and maintenance is extremely unlikely. As a result, these ice seal species will not be discussed further in this document.

None of the cetacean species listed above is expected to enter the ice-covered action areas during the winter months when ice road activities would be occurring. Therefore, the potential for encounters with cetaceans during ice road/trail construction and maintenance is extremely unlikely. As a result, cetacean species will not be discussed further in this document.

Ringed Seal

Ringed seals are circumpolar in distribution; the subspecies (*Phoca hispida hispida*) is present year-round in the Bering, Chukchi, and Beaufort seas off the coast of western and northern Alaska (Muto *et al.* 2017, Muto *et al.* 2018). Results of previous monitoring from Northstar (Aerts and Richardson 2009) and nearshore surveys in Foggy Island Bay east of the action areas (Aerts *et al.* 2008, Smultea *et al.* 2014) support the assumption that they are expected to be the most commonly occurring pinniped in the action areas during the ice road/trail season.

Throughout their range, ringed seals have an affinity for ice-covered waters and are well adapted to occupying both shore fast and pack ice (Kelly1988). They remain with the ice most of the year and use it as a platform for pupping and nursing in late winter to early spring, for molting in late spring to early summer, and for resting at other times of the year (Simpkins *et al.* 2003, Kelly *et al.* 2010). In the Beaufort, Chukchi, and Bering Seas ringed seals move seasonally coinciding with ice melting and retreating (Frost and Lowry 1984, Frost 1985, Kelly *et al.* 2010).

Ringed seals are closely associated with sea ice during breeding, pupping, and molting as are all ice seals. With the onset of freeze-up in the fall, ringed seal movements become increasingly restricted. Seals that have summered in the Beaufort Sea are thought to move west and south with the advancing ice pack, with many seals dispersing throughout the Chukchi and Bering seas where they remain throughout winter, and some staying in the Beaufort Sea (Frost and Lowry 1984, Muto *et al.* 2018).

During winter, ringed seals excavate and maintain several breathing holes to allow access to air while hunting prey species (*e.g.,* Arctic cod). The breathing holes also provide escape routes from polar bears and other predators such as foxes. Ringed seals in the action areas spend much of their time out of sight in their lairs or under the sea ice (BOEM 2018). Ringed seal movements during winter and spring are typically quite limited, especially where ice cover is extensive (Kelly *et al.* 2010).

In the spring (typically beginning in March), female ringed seals give birth to and nurse a single pup in a subnivean lair. The peak of pupping occurs in early April (Frost and Lowry 1981). Subnivean lairs are especially important for protecting pups, providing protection from predators and thermal protection from cold temperatures and wind.

Ringed seals feed year round (NMFS 2018a). Most ringed seal prey is small, and preferred prey tends to be schooling species that form dense aggregations. Fish of the cod family tend to dominate the diet from late autumn through early spring in many areas (Kovacs 2007).

Arctic cod is often reported to be the most important prey species for ringed seals, especially during the ice-covered periods of the year (Lowry *et al.* 1980).

The Alaska stock of ringed seals are the most abundant marine mammal in the Beaufort, Chukchi, and Bering seas (Kelly *et al.* 2010a, Kelly *et al.* 2010b). Currently a complete population estimate is not available for the entire Alaska stock (Allen and Angliss 2014, Muto *et al.* 2018). This is because abundance surveys of ringed seals in Alaska have used various methods and assumptions, and were conducted more than a decade ago; therefore, current and comprehensive abundance estimates or trends for the Alaska stock are not available (NMFS 2018a). Historic ringed seal population estimates in the Arctic ranged from 1 to 1.5 million seals (Frost 1985) to 3.3 to 3.6 million (Frost *et al.* 1988).

Ringed seal winter ecology studies conducted in the 1980s (Frost and Burns 1989, Kelly and Quakenbush 1990) and surveys associated with the Northstar development (Williams *et al.* 2001) provided information on both seal ice structure density and use where ice structures include both breathing holes and subnivean lairs. Ringed seal density estimates are based on these historical surveys (both on-ice and aerial).

Most ringed seals in the Beaufort and Chukchi seas follow the sea ice front south into the Bering Sea during fall where they remain throughout winter. Therefore, while they are still within the Beaufort Sea during winter, a much smaller portion of the Alaska ringed seal stock is present in the Beaufort Sea during winter as compared to the remainder of the year. Frost and Lowry (1984) estimated that approximately half of the population moves out of the Beaufort Sea, and into the Chukchi and Bering seas in winter.

Most taxonomists recognize five subspecies of ringed seals. The Arctic ringed seal subspecies occurs in the Arctic Ocean and Bering Sea and is the only stock that occurs in U.S. waters (referred to as the Alaska stock). NMFS listed the Arctic ringed seal subspecies as threatened under the ESA on December 28, 2012 (77 FR 76706), primarily due to anticipated loss of sea ice through the end of the 21st century due to ongoing climate change. On March 11, 2016, the U.S. District Court for the District of Alaska issued a memorandum decision in a lawsuit challenging the listing of ringed seals under the ESA (Alaska Oil and Gas Association, *et al.* v. National Marine Fisheries Service, *et al.,* Case No. 4:14–cv–00029–RRB). The decision vacated NMFS's listing of the Arctic subspecies of ringed seals as a threatened species. NMFS appealed that decision and on February 12, 2018, the Ninth Circuit U.S. Court of Appeals upheld the decision to list the ringed seal as threatened. The decision was affirmed and the listing reinstated on May 15, 2018.

A comprehensive and reliable abundance estimate for the Alaska stock of ringed seals is not available. However, using data from surveys in the late 1990s and 2000 (Bengtson *et al.,* 2005; Frost *et al.,* 2004), Kelly *et al.* (2010) estimated the total population in the Alaska Chukchi and Beaufort seas to be at least 300,000 ringed seals. This is likely an underestimate since surveys in the Beaufort Sea were limited to within 40 km (24.9 mi) from shore (Muto *et al.,* 2017). Conn *et al.* (2014) calculated an abundance estimate of about 170,000 ringed seals for the U.S. portion of the Bering Sea. This estimate did not account for availability bias and did not include ringed seals in the shorefast ice zone, which were surveyed using a different method. Thus, the actual number of ringed seals in the U.S. sector of the Bering Sea is likely much higher, perhaps by a factor of two or more (Muto *et al.,* 2017).

NMFS proposed critical habitat for the Arctic ringed seal in the northern Bering, Chukchi, and Beaufort seas off of Alaska on December 3, 2014 (79 FR 71714). The proposed critical habitat in U.S. waters includes all the contiguous marine waters from the ''coastline'' of Alaska to an offshore limit within the U.S. Exclusive Economic Zone (EEZ) and effectively include all marine waters within the EEZ where sea ice regularly forms during winter. The final rule is pending.

Generally, there is increasing concern about the future of the ringed seal populations due to receding ice conditions and potential habitat loss. Ringed seal habitat maybe modified by the warming climate and projections that suggest continued or accelerated warming in the future (Kelly *et al.* 2010). Climate models project ice and snow cover losses throughout the 21st century, with some variations, and increasing atmospheric concentrations of greenhouse gases that drive climate warming and increase ocean acidification (BOEM 2018), thereby affecting ringed seal habitat. The greatest impacts to ringed seals from climate change would manifest in less snow cover (BOEM 2018). Also, the duration of ice cover could be reduced leading to lower snow accumulation on ice (BOEM 2018), particularly over ringed seal subnivean lairs. Such changes would also threaten prey communities on which ringed seals depend.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Ringed seals could be adversely affected by exposure to visual and acoustic disturbances. The majority of impacts are likely to occur from visual exposure by machinery and vehicles used for ice roads and ice trails construction and from human presence. The associated noise from the machinery and vehicles could also cause pinniped behavioral modification and temporary displacement within the vicinity of the action area if the noise levels are high enough. In a few unlikely cases, these activities could result in serious injury or mortality if an animal is crushed by a construction machinery or vehicle while in its subnivean lair.

A series of reports from the Northstar development provide evidence of ringed seal reactions to human activity during ice road construction beginning in 1999. As summarized in Richardson and Williams (2000), approximately 6.6 km^2 (2.5 mi^2) were surveyed for ringed seals prior to initiation of ice road construction activities. Though much of the ice was flat and not optimal for seal lairs, surveys were conducted by biologists and Inupiat hunters who used avalanche probes to identify potential breathing holes and lairs. No breathing holes or lairs were documented during this January 1999 survey. A follow-up survey for ringed seal breathing holes and lairs was conducted in May 1999 using trained dogs. The May survey did locate at least two, possibly three, open breathing holes within the area previously surveyed in January.

The following year, a subsequent survey was undertaken using dog-based searches which found numerous seal structures within about 1 km (0.6 mi) of Northstar facilities before and after

intensive construction activities in early and late winter. This may indicate that the survey method using avalanche probes and Inupiat hunters was not effective or that ringed seals were unaffected by ice road/trail construction to such extent that it prevented them from establishing breathing holes in the project area (Richardson and Williams 2000).

During two replicate aerial surveys conducted in 1999, ringed seals were observed within approximately 0.64 km (0.4 mi) of ice roads (Richardson and Williams 2000). These six seals were not assumed to be the only seals located within that 0.64 km (0.4 mi) area. Using seal densities in similar water depths approximately 4 to 10 km (about 2 to 6.2 mi) from the ice roads, about 12 ringed seals would be expected to occur within 0.64 km (0.4 mi), and 110 ringed seals within 4 km (2.5 mi), during 1999. Seal behavior within 0 to 0.64 km (0.4 mi) of the road may have been affected in some subtle way; however, the observation of seals within that area suggests that effects of the ice roads were minor and localized. As summarized in Williams *et al.* (2006), several factors influence the rate of abandonment of seal lairs, making it challenging to attribute abandonment to any specific factor. Of 181 seal structures located within 11 to 3,500 m (36 ft to 2.1 mi) of Northstar during surveys conducted in 2001, 118 (65 percent) were still actively used in late May (the end of ice road season).

The effect of underwater noise on ringed seals is dependent on the ability of the seal to perceive or hear the sounds. Due to the overall relatively low-noise levels associated with the ice roads and ice trails construction and that most of these noises are airborne, it is highly unlikely seals in the vicinity of the construction site would suffer hearing damages (*i.e,* permanent hearing threshold shift or temporary hearing threshold shift). Temporary short-term changes in behavior or avoidance of the affected area as a result of disturbance is the most common response of marine mammals to increased noise levels (Richardson *et al.* 1995). Nonetheless, some minor disturbance due to in-air or underwater (ice-covered) conditions may occur as a result of ice road/trail activities. The types of impacts to ringed seals exposed to low-level noise may include masking and temporary displacement. Increased levels of natural and artificial sounds can disrupt behavior by masking. The masking of communication signals by anthropogenic noise may reduce the communication space of animals (Clark *et al.* 2009). Factors other than received sound level such as the activity state of animals exposed can affect the probability of a behavioral response (Ellison *et al.* 2012).

The current acoustic exposure threshold for Level B harassment for continuous noise sources is 120 dB re 1 μPa (NMFS 2018). Southall *et al.* (2007) assessed relevant studies, found considerable variability among pinnipeds, and determined exposures between approximately 90 and 140 dB generally do not induce strong behavioral responses of pinnipeds in water, but an increasing probability of avoidance and other behavioral effects exists in the 120 to 160 dB range. The use of the Ditchwitch to cut ice or from pumping at Northstar did not exceed 120 dB at 100 m (328 ft) (Greene *et al.* 2008). Despite the potential exposure to such noise levels, it is highly unlikely the disturbance would result in biologically significant effects on the seals (individually or to the population) as evident from Northstar research (Richardson and Williams 2000). In addition, Kelly *et al.* (1986) report that some ringed seals temporarily departed their lairs when sound sources were within 97 to 3,000 m (0.06 to 1.9 mi) but did return to their lairs later. Haul outs with and without disturbance were not significantly different, and time spent in the water versus hauled out was not significantly different.

Displacement of seals from ice road construction is considered unlikely but could occur. As described in Williams *et al.* (2006), during three surveys conducted in November/December, March and May of 2001 during Northstar construction activities, 181 ringed seal structures were located and 118 (65 percent) were still actively used by late May 2001. Active ringed seal structures appeared to be evenly distributed across the Northstar study area in relation to the facility. The noise heard through snow and ice, and into the subnivean lair or den location of the animal should be considerably weaker than at source due to sound being attenuated in the ice and snow. In March 2002, sounds and vibrations from vehicles traveling along an ice road along Flaxman Island (a barrier Island east of Prudhoe Bay) were recorded in artificially constructed polar bear dens. Sounds were attenuated strongly by the snow cover of the artificial dens; broadband vehicle traffic noise was reduced by 30–42 dB. Due to attenuation of noise through ice and snow, it is less likely that seals in lairs would be exposed to levels exceeding 120 dB re 1 μPa underwater and that such exposure would result in displacement.

In air noise associated with ice road/trail activities is not expected to cause disturbance to ringed seals, as construction noise is not likely to exceed 100 dB re 20 μPa at the source. During the winter of 2000, background unweighted in air noise levels from various machineries measured in the vicinity of Northstar ranged from 59 to 84 dB re 20μPa, and this background noise level was related to wind speed (Greene *et al.* 2008). Similar levels were reported during the winter of 2001 and 2002 by Blackwell *et al.* (2004a, b) with minimum background unweighted in air noise levels of 44 to 52 dB re 20μPa measured in ice-covered conditions with low wind up to 10 km (6 mi) from Northstar in Prudhoe Bay. The NMFS in air threshold for disturbance of phocids (*i.e.,* ringed seals) is 100 dB re 20 μPa (NMFS 2018b). For this reason, in air noise is not expected to result in harassment of seals.

The probability that acoustic noise associated with ice road and trail construction would result in masking any acoustic signals of ringed seals during construction is very low. Ice road and trail construction activities would be initiated prior to March 1st when animals begin constructing dens prior to pupping and during pupping when seals are minimally vocal in the dens to prevent predation. Also, in order for the effects of masking to occur, a seal would have to be within close proximity to the specific sound source to result in a Level B harassment. The probability that the noise producing activities associated with the proposed Project would result in masking acoustic signals important to the behavior and survival of marine mammal species in the Action Areas is low.

Overall, the construction and maintenance of ice roads and trails is not expected to cause significant impacts on habitat used by ringed seals or on their food sources. Landfast ice near the shoreline is the best habitat for ringed seal pupping (Kelly 1988), with water depth strongly dictating whether ringed seals overwinter in a given area. Depths greater than about 3 m (10 ft) are typically the minimum depth suitable for successful lair construction (Miller *et al.* 1998, Link *et al.* 1999) although more shallow areas with open leads or cracks can be attractive to seals as described for the road between OPP and SID.

While ringed seals may be present in the proposed Action Areas during winter, the number of seals is generally expected to be relatively low during ice road/trail activities. Ice road construction is a short-term activity with minor disruptions to the natural

habitat. Ringed seals feed on fish and a variety of benthic species including crabs and shrimp. There should be no impact on the distribution of fish or zooplankton as a result of ice road/trail construction within the Action Areas. The roads and trails melt each year and do not affect water circulation, substrate, fish presence or use of the area, or benthic populations.

NMFS' proposed rule designating critical habitat for ringed seals identified three physical and biological features (PBFs) essential to the conservation of the species including:

1. Suitable sea ice habitat for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as seasonal landfast (shorefast) ice, except for any bottom-fast ice extending seaward from the coast line in waters less than 2 m (6.5 ft) deep, or dense, stable pack ice, that has undergone deformation and contains snowdrifts at least 54 cm (21 in.) deep;
2. Sea ice habitat suitable as a platform for basking and molting, which is defined as sea ice of 15 percent or more concentration, except for any bottom-fast ice extending seaward from the coast line in waters less than 2 m (6.5 ft) deep; and
3. Primary prey resources to support Arctic ringed seals, which are defined to be Arctic cod, saffron cod, shrimps, and amphipods.

Disturbance associated with construction, operation and maintenance of ice roads and trails is unlikely to have long-term effects on the availability of sea ice habitat identified in PBFs 1 and 2. Disturbances due to ice road and trail construction and maintenance activities are not expected to have any effect on PBF3, because these activities would not cause injury or mortality to fish species, nor would it displace food resources of ringed seals.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is one of the types of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as exposure of ringed seals by construction activities and noise has the potential to result in disruption of behavioral patterns for individual animals. There could also be potential for serious injury/mortality if an animal is crushed by a construction machinery or vehicle while in its subnivean lair. Auditory injury is unlikely to occur because the overall noise levels generated from the construction activities are low. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Marine mammals (ringed seals) likely to be exposed to visual and acoustic disturbances from ice roads and ice trails construction; (2) the density or occurrence of marine mammals within the areas likely to be disturbed; and, (3) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate. This section includes an overview of estimated ringed seal density in the area, a description of the area of potential disturbance, estimates for noise sources (under ice-covered conditions and in air), and a discussion of the potential for behavioral responses or serious injury or mortality due to ice road/trail/pad activities.

Ringed Seal Densities

Ringed seals are present in the nearshore Beaufort Sea waters and sea ice year round, maintaining breathing holes and excavating subnivean lairs in the landfast ice during the ice-covered season. During this ice-covered season, ringed seals' home ranges are generally less than 5 km^2 (2 mi^2) in area (Frost *et al.* 2002, Kelly *et al.* 2005). While older datasets from the 1970s and 80s provide important context for understanding seal presence in the region, only more recent surveys beginning in 1997 have been used to calculate density for this rule as described in the following sections.

Winter Densities

Ringed seals overwinter in the landfast ice in and around the project area. Relatively few data are available for ringed seal density in the southern Beaufort Sea during the winter months, but several studies on ringed seal winter ecology were undertaken during the 1980s (Kelly *et al.* 1986, Frost and Burns 1989). These reports, in addition to data associated with the Northstar development and the abandoned Seal Island (Williams *et al.* 2001, Frost *et al.* 2002) provide information on both seal ice structure use (where ice structures include both breathing holes and subnivean lairs) and the density of ice structures (Table 4).

Both male and female ringed seals maintain a number of breathing holes and haul out in more than one subnivean lair during the ice-covered season. Kelly *et al.* (1986) found that of their tagged seals, the animals would haul out between one and multiple subnivean lairs. The distances between each lair could be as great as 4 km (2.5 mi) with numerous breathing holes in between (Kelly *et al.* 1986). While these authors calculated the average number of lairs used by an individual seal to be 2.85 (SD = 2.51) per animal, they also suggest that this is likely to be an underestimate.

TABLE 2—SEAL STRUCTURE DENSITY ALONG THE BEAUFORT SEA COAST NEAR THE PROJECT AREA

Year	Sea structure density/km^2	Source
1982	3.6	Frost and Burns 1989.
1983	0.81	Kelly *et al.* 1986.
Dec. 1999	0.71	Williams *et al.* 2001.
May 2000	1.2	Williams *et al.* 2001.
Average structure density/km^2	1.58	

In 1982, aerial surveys were conducted near Reindeer Island, just east of the project area (Northstar and SID), where seismic exploration activities were occurring. Seal structures were located by searching with a dog along 267 km (166 mi) of seismic and control lines as well as 28 km (17 mi) of non-systematic search lines (295 linear km [183 linear mi] total). A total of 157 structures were found resulting in an average estimate of 0.53/km seal structures (Kelly *et al.* 1986) or 3.6 structures/km² (Frost and Burns 1989).

In 1983, the vicinity of Reindeer Island was surveyed again and the average number of seal structures recorded was 0.70/km over approximately 81 km (50 mi) of linear survey lines resulting in an average number of total structures of 0.81/km².

In 1999, a total of 26 seal structures were located within a 36.5 km² area encompassing the Northstar Development resulting in an estimated 0.71 structures/km² in December 1999 and 1.2 structures/km² in May 2000 (Richardson and Williams 2001).

To estimate ringed seal density during the winter, an average structure density was divided by the average number of structures used by seals (Kelly *et al.* 1986). Thus, for the winter season ringed seal density has been estimated as the average ice structure density (1.58/km²) divided by the average number of ice structures used by an individual seal (2.85, SD = 2.51). This results in an estimated density of 0.55 ringed seals/km² (for example, 1.58/2.85 = 0.55). However, this density is likely to be an overestimate because the equation denominator of 2.85 is assumed to be an underestimate (Kelly *et al.* 1986).

Average ice structure density/Average number of structures per seal = Estimated Average Winter Seal Density: 1.58/2.85 = 0.55 seals/km².

Spring Densities

In 1997, prior to Northstar construction, British Petroleum Exploration Alaska (BPXA) conducted aerial surveys for seals as part of the industry monitoring programs for the Northstar facility. These datasets provide the best available information on spring ringed seal density for the project area. Information is based on aerial surveys were flown around Northstar and west of Prudhoe Bay during late May and early June (Frost *et al.* 2002, Moulton *et al.* 2002a,b, Richardson and Williams 2003) when the greatest percentage of seals have abandoned their lairs and are hauled out on the ice (Kelly *et al.* 2010, Kelly *et al.* 2010).

Because densities were consistently very low where water depth was <3m (and these areas are generally frozen solid during the ice-covered season) densities were calculated where water depth was >3m deep (Moulton *et al.* 2002a,b), Richardson and Williams 2003). Frost *et al.* (2002) and Frost *et al.* (2004) reported slightly higher densities based on surveys conducted during this same time period between 1997 and 1999. As with all aerial surveys, animal densities are underestimated because animals are missed, or not counted. This is generally because they are not hauled out where they can be seen or are missed by the observer. Therefore, these density estimates represent minimum estimates during the time and location of the surveys. The average uncorrected densities calculated based on these separate datasets (1997–1999) are provided in Table 5. It is acknowledged that densities of seals near the Eni SID Action Area are likely to be lower than densities calculated for the purposes of estimating take in this analysis, due to much shallower water near the Eni SID site. However, for consistency and as a precautionary measure, the same density estimates are used throughout this analysis.

TABLE 3—ESTIMATED RINGED SEAL DENSITIES (UNCORRECTED) BASED ON SPRING AERIAL SURVEYS DURING ICE-COVERED CONDITIONS, 1997–2002

Year	Uncorrected seal density (no/km²)		Average uncorrected ringed seal density (no/km²)
	Moulton *et al.* 2002, 2005*	Frost *et al.* 2002, 2004	
1997	0.43	0.73	0.58
1998	0.39	0.64	0.52
1999	0.63	0.87	0.75
2000	0.47		0.47
2001	0.54		0.54
2002	0.83		0.83
Average density (no/km²)			0.61

* Water depths > 10 ft.

For the period 2000, 2001, and 2002, (Moulton *et al.* 2005) reported ringed seal densities (uncorrected) on landfast ice during Northstar construction were calculated as 0.47, 0.54, and 0.83 seals/km². Based on the average density of surveys flown from 1997 to 2002 the uncorrected density of ringed seals during the spring is expected to be 0.61 ringed seals/km².

As reported in Frost *et al.* (2002) habitat-related variables including water depth, location relative to the fast ice edge, and ice deformation have shown to result in substantial and consistent effects on the distribution and abundance of seals. Moulton *et al.* (2003) and Moulton *et al.* (2005) also reported that environmental factors such as date, water depth, degree of ice deformation, presence of meltwater, and percent cloud cover had more conspicuous and statistically-significant effects on seal sighting rates than did any human-related factors. Thus, the intra- and inter-annual variability in survey conditions and ice characteristics is unavoidable and identifying trends in seal abundance or estimating density is challenging.

TABLE 4—RINGED SEAL DENSITIES

Winter average density (seal/km²)	Spring average density (seal/km²)
0.55	0.61

In summary, for the purposes of estimating take associated with ice road/trail activities, winter and spring densities are assumed to be 0.55 and 0.61 seals/km² (respectively) as shown in Table 6.

Take Estimates

Level B Harassment

To estimate exposures of ringed seals to disturbance that may result in a take, the total area of potential disturbance (*i.e.,* exposure area) associated with construction and maintenance of the roads/trails/pads is defined as 170 m (approximately 558 ft) on either side of the road/trail/pad centerline; a total width of 340 m (approximately 1,115 ft).

Again, the total width of the exposure area is 340 m (558 ft). This width is then multiplied by the total length of roads/trails likely to be constructed each year to calculate the exposure area in km². Due to the variability in the length of ice roads/trails that may be needed from year to year, a 10 percent buffer is also added to the total length and is accounted for in the total area calculated. The total area of exposure is then multiplied by the seasonal ringed seal density to calculate the total estimated ringed seals exposed each season. Since there are two seasons during which ringed seals may be exposed to ice road activity (winter and spring), the exposure estimates for winter and spring are then added together to calculate the total number of seals exposed per year. For example, the following calculation was used for Northstar ice roads and trails:

TAE x D = TES

TES (winter) + TES (spring) = TEY

where

TAE = Total Area of Exposure

D = Species Density (variable by season)

TES = Total Estimated Seals Exposed Per Season

TEY=Total Estimated Seals Exposed Per Year

For example:

12.96 km² (TAE) × 0.55 (winter density per km²) = 7.13 seals/winter

12.96 km² (TAE) × 0.61 (spring density per km²) = 7.91 seals/spring

7.13 seals/winter + 7.91 seals/spring = 15.03 seals/year

As stated in Description of Proposed Activities section earlier, an ice trail is constructed at SID each year and is located approximately 15 to 30 m (50 to 100 ft) west of the ice road. The ice trail is located within the exposure area of the ice road centerline (340 m). Therefore, the same formula shown above is applied for calculating potential takes at SID.

Based on the exposure estimates, Eni and Hilcorp request takes for Level B harassment for the 5-year period as shown in Table 7. Takes are presented annually for each company and are requested for ice road and ice trail construction, operation and maintenance expected to occur between December and May of each year, depending on local conditions. Potential Level B harassment takes could occur in all five years.

Table 5. Ringed Seal Level B Harassment Take Estimate Associated with Ice Road/Trail Activities.

	Total ice road length (km)	Total ice trail length (km)	Total length plus 10% buffer[1]	Total width (km)	Total area of exposure (km²)	Est. no. seals exposed during winter (density[2] x area)	Est. no. seals exposed during spring (density[2] x area)	Total est. takes per year	Total Level B take estimates	Total est. takes over 5 years
Eni SID	6.76	0[3]	7.43	0.42	3.12	1.72	1.90	3.62	4	20
Eni ODS	11.26[4]	0	12.39	0.34	4.21	2.32	2.57	4.89	5	25
Hilcorp Northstar	11.71	22.94	38.12	0.34	12.96	7.13	7.91	15.03	16	80

[1] To account for variability

[2] Density: Winter=0.55 seals/km²; Spring=0.61 seals/km²

[3] Note that Eni constructs an ice trail each year that is approximately 15 to 30 m west of the ice road. The trail is located within the exposure area of 170 m and is accounted for in estimated takes.

[4] Length of alternate route used as worst case.

NMFS does not expect Level A harassment of ringed seal to occur, as noise and visual exposure to construction activities will not become injurious as defined for purposes of a Level A take under the MMPA. However, it is possible that a seal may be in its lair during ice roads/trails construction and thus, it is possible for a seal to become crushed by construction machinery or vehicle while the road/trail is being erected, resulting in injury, serious injury, or mortality. A detailed discussion of such events is provided below.

Potential Serious Injury or Mortality

Based on a review of literature and monitoring reports from Northstar and other North Slope projects, there is documentation of one seal mortality associated with a vibroseis program outside the barrier islands east of Bullen Point in the eastern Beaufort Sea (MacLean 1998). During a 1999 NMFS workshop to review on-ice monitoring and research, Dr. Brendan Kelly (then of the University of Alaska), also indicated that a dead ringed seal pup was found during his research using trained dogs to locate seal structures in the ice. The dead ringed seal pup was located approximately 1.5 km (0.9 mi) from the Northstar ice road. No data on the age of the pup, date of death, necropsy results, or cause of death are available. Therefore, whether ice road construction at Northstar could have contributed to the death of this pup, or if its death was coincidental to Northstar activities cannot be determined (Richardson and Williams 2000).

While the only recorded mortality of a seal occurred in 1998, Eni and Hilcorp are also requesting ten takes for each development over the 5-year period for potential ringed seal serious injury or mortality during construction, operation and maintenance of ice roads and trails.

However, NMFS does not consider this request to be adequately justified, and is concerned that the requested mortality in this proposed action is much higher than other similar actions.

For instance, in the 2019 Hilcorp Liberty rule for ice road and ice trail construction on the North Slope, there are two lethal takes proposed over the first 5 years (and eight over the following 20 years, for 10 total mortalities over 25 years). In that action, four ice roads, totaling 51.5 km in length would be constructed: In Years 1 through 3, all four roads would be constructed; in Years 4 and 5, only Road #1 would be constructed (11.3 km in length). By comparing the two proposed actions, Hilcorp Northstar and Eni are constructing more ice roads/trails than Hilcorp is at the Liberty site over a five-year period.

In terms of the distribution of construction activities between the two companies, Hilcorp is constructing 1.9 times as many ice road/trail kilometers as Eni is at either SID or ODS. However, Eni's construction activities encompass two separate sites and each have the potential to encounter inhabited seal lairs given an assumed equal distribution of species. Based on these factors, NMFS proposes authorizing three serious injury/mortalities for ice road/trail activities at each of Eni's sites (Spy Island and Oooguruk), and six serious injury/mortalities at Hilcorp's Northstar site, all over five years. A summary of serious injury/mortality for Hilcorp and Eni over the five-year period is provided in Table 8.

TABLE 6—TOTAL ESTIMATED RINGED SEAL TAKES ANNUALLY AND OVER THE 5-YEAR PROPOSED LOA PERIOD

	Serious injury/ mortality for 5 years
Eni SID	3
Eni ODS	3
Hilcorp Northstar	6
Total	12

Effects of Specified Activities on Subsistence Uses of Marine Mammals

Subsistence hunting continues to be an essential aspect of Inupiat Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting activities in and around the Beaufort Sea. The animals taken for subsistence provide a significant portion of the food that will last the community through the year. Marine mammals represent on the order of 60–80 percent of the total subsistence harvest. Along with the nourishment necessary for survival, the subsistence activities strengthen bonds within the culture, provide a means for educating the younger generation, provide supplies for artistic expression, and allow for important celebratory events.

The proposed ice roads/trails construction projects are generally remote from subsistence use areas. Nuiqsut is the closest Native Alaskan community to the Northstar, ODS and SID facilities; located approximately 91 km (about 57 mi) southwest from Northstar, 40 km (about 25 mi) from ODS, and 56 km (about 35 mi) from SID. Primary subsistence users in the area between Oliktok Point and West Dock are residents from the village of Nuiqsut. People from Utqiagvik (about 309 and 264 km [192 and 164 mi] west of Northstar and SID, respectively) and Kaktovik harvest marine mammals that pass through the area but generally do not hunt there. Kaktovik is 196 km (122 mi) east of Northstar and 241 km (150 mi) east of SID.

Nuiqsut hunters harvest ringed seals primarily during open water periods in July through August. In summer, boat crews hunt ringed, spotted and bearded seals. The most important seal hunting area for Nuiqsut hunters is off the Colville Delta, as far east as Pingok Island. The closest edge of the main sealing area at Pingok Island, is about 27 km (17 mi) west of Northstar (SRBA 2010, Galginaitis 2014). While less frequent than open water hunting, seals are taken by hunters on snow machines before break-up.

In summary, Hilcorp and Eni's proposed ice roads and ice trails construction projects would occur far away from subsistence activities, and would be conducted during the time few subsistence activities occur. In winter and spring, small numbers of ringed seals may be disturbed and possibly displaced from the immediate locations of the ice roads and trails shown on Figures 1 through 4. Seal hunters would likely avoid the areas near SID, Northstar and ODS in favor of less developed more productive areas closer to the main sealing areas near the Colville River delta. Therefore, construction and maintenance of the ice roads and trails is unlikely to impact on winter subsistence hunting of ringed seals.

Proposed Mitigation

In order to issue an LOA under Section 101(a)(5)(A) 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. 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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

For Hilcorp and Eni's proposed ice roads and trails construction project, Hilcorp and Eni worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize human-seal interactions and to avoid takes by serious injury/mortality from the activities, to monitor marine mammals within designated zones of influence in the project vicinity and, if seals are within the designated shutdown zone after March 1 during the

pupping season, to initiate immediate pause of all construction activities, making it very unlikely potential injury or serious injury/mortality to seals would occur and ensuring that Level B behavioral harassment of seals would be reduced to the lowest level practicable. Construction activities may result after the seals leave the shutdown zone on their own.

The proposed mitigation and monitoring measures are described below.

Wildlife Training

Prior to initiation of sea ice road- and ice trail-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning (*i.e.,* ice road construction workers, surveyors, security personnel, and the environmental team) will receive annual training on implementing mitigation and monitoring measures. Personnel are advised that interactions with, or approaching, any wildlife is prohibited. Annual training also includes reviewing the company's Wildlife Management Plan. In addition to the mitigation and monitoring plans, other topics in the training will include:

- Ringed Seal Identification and Brief Life History
- Physical Environment (habitat characteristics and how to potentially identify habitat)
- Ringed Seal Use in the Ice Road Region (timing, location, habitat use, birthing lairs, breathing holes, basking, etc.)
- Potential Effects of Disturbance
- Importance of Lairs, Breathing Holes and Basking to Ringed Seals

General Mitigation Measures Implemented Throughout the Ice Road/Trail Season

General mitigation measures will be implemented through the entire ice road/trail season (December through May) including during construction, maintenance, use and decommissioning.

- Ice road/trail speed limits will be no greater than 45 miles per hour (mph) under typical circumstances but may be exceeded in emergency situations. Travel on ice roads and trails is restricted to industry staff.
- Following existing safety measures, delineators will mark the roadway in a minimum of ¼-mile increments on both sides of the ice road to delineate the path of vehicle travel and areas of planned on-ice activities (*e.g.,* emergency response exercises). Following existing safety measures currently used for ice trails, delineators will mark one side of an ice trail a minimum of every ¼ mile. Delineators will be color-coded, following existing safety protocol, to indicate the direction of travel and location of the ice road or trail. These measures will ensure that vehicles stay on disturbed ice roads/trails and will not deviate to undisturbed areas.
- Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, will be clearly marked or mapped using GPS coordinates of the locations, so vehicles travel on ice roads/trails will not deviate to undisturbed areas.
- Personnel will be instructed to remain in the vehicle and safely continue, if they encounter a ringed seal while driving on the road.

Mitigation Measures After March 1st

After March 1st, and continuing until decommissioning of ice roads/trails in late May or early June, the on-ice activities mentioned above can occur anywhere on sea ice where water depth is less than 3 m (10 ft) (*i.e.,* habitat is not suitable for ringed seal lairs). However, if the water is greater than 3 m (10 ft) in depth, these activities should only occur within the boundaries of the driving lane or shoulder area of the ice road/trail and other areas previously disturbed (*e.g.,* spill and emergency response areas, snow push areas) when the safety of personnel is ensured.

In addition to the general Mitigation Measures, the following measures will also be implemented after March 1st:

- Ice road/trail construction, maintenance and decommissioning will be performed within the boundaries of the road/trail and shoulders, with most work occurring within the driving lane. To the extent practicable and when safety of personnel is ensured, equipment will travel within the driving lane and shoulder areas.
- Blading and snow blowing of ice roads will be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. Snow will be plowed or blown from the ice road surface.
- In the event snow is accumulating on a road within a 45.7-m (150-ft) radius of an identified downwind seal or seal lair (as identified by seal ice structure), operational measures will be used to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles will not stop within 45.7 m (150 ft) of identified seals or within 152.4 m (500 ft) of known seal lairs.
- When safety of personnel is ensured, tracked vehicle operation will be limited to the previously disturbed ice trail areas. When safety requires a new ice trail to be constructed after March 1st, construction activities such as drilling holes in the ice to determine ice quality and thickness, will be conducted only during daylight hours with good visibility. Ringed seal structures will be avoided by a minimum of 45.7 m (150 ft) during ice testing and new trail construction. Once the new ice trail is established, tracked vehicle operation will be limited to the disturbed area and when safety of personnel is ensured.
- If a seal is observed on ice within 45.7 m (150 ft) of the centerline of the ice road/trail, the following mitigation measure will be implemented:
- Construction, maintenance or decommissioning activities associated with ice roads and trails will not occur within 45.7 m (150 ft) of the observed ringed seal, but may proceed as soon as the ringed seal, of its own accord, moves farther than 45.7 m (150 ft) distance away from the activities or has not been observed within that area for at least 24 hours. Transport vehicles (*i.e.,* vehicles not associated with construction, maintenance or decommissioning) may continue their route within the designated road/trail without stopping.

Proposed Monitoring and Reporting

General Monitoring Measures Implemented Throughout the Ice Road/Trail Season

General monitoring measures will be implemented through the entire ice road/trail season including during construction, maintenance, use and decommissioning.

If a ringed seal is observed within 45.7 m (150 ft) of the center of an ice road or trail, the operator's Environmental Specialist will be immediately notified with the information provided in the Reporting section below.

- The Environmental Specialist will relay the seal sighting location information to all ice road personnel and the company's office personnel responsible for wildlife interaction, following notification protocols described in the company-specific Wildlife Management Plan. All other data will be recorded and logged.
- The Environmental Specialist or designated person will monitor the ringed seal to document the animal's location relative to the road/trail. All work that is occurring when the ringed seal is observed and the behavior of the seal during those activities will be documented until the animal is at least 45.7 m (150 ft) away from the center of the road/trail or is no longer observed.

• The Environmental Specialist or designated person will contact appropriate state and Federal agencies as required.

Monitoring Measures After March 1st

In addition to the general Monitoring Measures, the following measures will also be implemented after March 1st:

If an ice road or trail is being actively used, under daylight conditions with good visibility, a dedicated observer (not the vehicle operator) will conduct a survey along the sea ice road/trail to observe if any ringed seals are within 152.4 m (500 ft) of the roadway corridor. The following survey protocol will be implemented:

• Surveys will be conducted every other day during daylight hours;

• Observers for ice road activities need not be trained Protected Species Observers (PSOs), but they must have received the training described above and understand the applicable sections of the Wildlife Interaction Plan. In addition, they must be capable of detecting, observing and monitoring ringed seal presence and behaviors, and accurately and completely recording data; and

• Observers will have no other primary duty than to watch for and report observations related to ringed seals during this survey. If weather conditions become unsafe, the observer may be removed from the monitoring activity.

If a ringed seal structure (*i.e.,* breathing hole or lair) is observed within 152.4 m (500 ft) of the ice road/trail, the location of the structure will be reported to the Environmental Specialist who will then carry out notification protocol identified above and:

• An observer will monitor the structure every six hours on the day of the initial sighting to determine whether a ringed seal is present. Monitoring for the seal will occur every other day the ice road is being used unless it is determined the structure is not actively being used (*i.e.,* a seal is not sighted at that location during monitoring). A lair or breathing hole does not automatically imply that a ringed seal is present.

Reporting

A final end-of-season report compiling all ringed seal observations will be submitted to NMFS Office of Protected Resources within 90 days of decommissioning the ice road/trail. The report will include:

• Date, time, location of observation;

• Ringed seal characteristics (*i.e.,* adult or pup, behavior (avoidance, resting, etc.));

• Activities occurring during observation including equipment being used and its purpose, and approximate distance to ringed seal(s):

• Actions taken to mitigate effects of interaction emphasizing: (1) Which mitigation and/or monitoring measures were successful; (2) which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals; (3) the effectiveness and practicality of implementing mitigation and monitoring measures; (4) any issues or concerns regarding implementation of mitigation and/or monitoring measures; and (5) potential effects of interactions based on observation data; and

• Proposed updates (if any) to Wildlife Management Plan(s) or Mitigation and Monitoring Measures.

In the rare event a seal is killed or seriously injured by ice road/trail activities, NMFS will be notified immediately.

In the event ice road/trail personnel discover a dead or injured seal but the cause of injury or death is unknown or believed not to be related to ice road/trail activities, NMFS will be notified within 48 hours of discovery.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants conducting activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

• A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;

• A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

• A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

• What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

As discussed earlier, Hilcorp and Eni's proposed ice roads and trails construction is expected to have no unmitigable adverse impacts on subsistence use of marine mammals in the project area, and the construction projects would occur in areas away from subsistence activities during the time when there is no subsistence activities. Nevertheless, both Hilcorp and Eni have developed Plans of Corporations (POCs) to ensure that no impact would occur. Both companies have been engaging the communities of Utqiagvik and Nuiqsut to share information about planned exploration/development activities and to maintain dialogue about measures to minimize potential impacts on the subsistence harvest of seals or whales. For the proposed ice roads and ice trails construction and maintenance activities, Hilcorp and Eni developed further mitigation and monitoring measures to minimize the potential impacts to subsistence use of marine mammals in the area. These measures are described below.

Hilcorp

To help minimize disturbances to marine mammal subsistence resources, Hilcorp has signed a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) and Whaling Captains' Associations of nearby North Slope communities. The CAA describes measures to minimize any adverse effects on the availability of bowhead whales for subsistence use. Hilcorp also conducts the Cross Island whaling survey every year to document any conflicts and ensure that operations continue to be compatible with the hunt.

The CAA and much of the coordination focus on whales and whaling activities. To date, the Native community has not expressed concerns over interactions with seals, particularly during the ice-covered seasons. Hilcorp states that it will continue to address questions and concerns from community members, and continue to provide them with contact information of project management to which they can direct concerns related to Northstar operations.

In addition, Hilcorp has adopted the ''Good Neighbor Policy'' originally put in place for Northstar by BPXA. The policy is a commitment to the eleven whaling villages, the Inupiat Community and the Siberian Yupik Community to establish financial assurance in the event of an oil spill. While the focus is on bowhead whales, the policy does include other Arctic marine resources including ringed seals. The Good Neighbor Policy also outlines how Hilcorp would provide transportation for the subsistence

community to alternate hunting areas in the event that a spill prevents the use of Cross Island or other hunting areas. It also has provisions for providing interim alternative food supplies to community members, along with counselling and cultural assistance. Hilcorp is committed to adhering to the CAA and Good Neighbor Policy for the duration of North Slope operations as necessary.

Eni

To help minimize disturbances to marine mammal subsistence resources, Eni also signs a CAA each year with the AEWC and Whaling Captains' Associations of nearby North Slope communities. The CAA describes measures to minimize any adverse effects on the availability of bowhead whales for subsistence use. Eni also conducted multiple community meetings and meetings with subsistence organizations such as the AEWC and NWCA to establish and maintain positive relationships with locals that rely on subsistence resources in the area.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

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, and specific consideration of take by serious injury/mortality previously authorized for other NMFS research activities).

Serious Injury and Mortality

NMFS is proposing to authorize a very small number of serious injuries or mortalities that could occur incidental to ice roads and ice trails construction and maintenance.

NMFS considers many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to the optimum sustainable population (OSP) level (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown, the size and distribution of the population, and existing impacts and environmental conditions. The potential biological removal (PBR) metric can help inform the potential effects of serious injury and mortality caused by activities authorized under 101(a)(5)(A) on marine mammal stocks.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, and is a measure to be considered when evaluating the effects of serious injury and mortality on a marine mammal species or stock. Optimum sustainable population (OSP) is defined by the MMPA (16 U.S.C. 1362(9)) as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time.

To specifically use PBR, along with other factors, to evaluate the effects of serious injury and mortality, we first calculate a metric that incorporates information regarding ongoing anthropogenic serious injury and mortality into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate), which is called ''residual PBR''. We then consider how the anticipated potential incidental serious injury and mortality from the activities being evaluated compares to residual PBR. Anticipated or potential serious injury and mortality that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated serious injury and mortality that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also factor into a negligible impact determination). For a species or stock with incidental serious injury and mortality less than 10 percent of residual PBR, we consider serious injury and mortality from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic serious injury and mortality that alone (*i.e.,* in the absence of any other take) cannot affect annual rates of recruitment and survival.

Regarding the impacts of the specified activities analyzed here, a stock-wide PBR for ringed seals is unknown; however, Muto *et al.* (2018) estimate PBR for ringed seals in the Bearing Sea alone to be 5,100 seals. Total annual mortality and serious injury is 1,054 for a residual PBR (r-PBR) of 4,046, which means that the 10 percent insignificance threshold is 405 seals. Currently there is one authorized MMPA incidental take authorization authorizing takes of serious injury/mortality of ringed seals as a result of NMFS Alaska Fisheries Science Center fisheries research activities in the Arctic (84 FR 46788; September 5, 2019). This authorization authorizes up to 4 mortalities annually over the 5-year regulation. In the case of the Hilcorp-Eni ice roads and ice trails construction, the authorized taking, by serious injury and mortality, of 12 ringed seals over the course of 5 years, equates to an average of less than 4 seals serious injury/mortality annually. This number is far less than the 10 percent r-PBR of 405 seals, when considering mortality and serious injuring caused by other anthropogenic sources. This amount of take, by mortality and serious injury, is considered insignificant and therefore supports our negligible impact finding.

Harassment

Hilcorp and Eni requested, and NMFS proposes, to authorize take, by Level B harassment of ringed seals. The amount

of taking proposed to be authorized is low compared to marine mammal abundance. Potential impacts of Hilcorp-Eni's proposed ice roads and ice trails construction activities are mostly from behavioral disturbances due to exposure to machinery and human activity. The potential effect of the Level B harassment is expected to be localized and brief. The construction crew would be required to closely monitor ringed seals in the vicinity of the project activity and to make sure that potential impacts are within the levels that are analyzed.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Only 12 ringed seals are authorized to be taken by serious injury/mortality over 5 years; *i.e.,* less than 0.1 percent of residual PBR (considering only a partial abundance estimate);
- No injury by permanent hearing threshold shift is expected;
- The only harassment is Level B harassment in the form of brief and localized behavioral disturbance and avoidance;
- The amount of takes, by harassment, is low compared to population sizes; a
- Critical behaviors such as lairing and pupping by ringed seals would be avoided and minimized through implementation of ice road Best Management Plans;
- No long lasting modification in marine mammal habitat; and
- Ice roads/trails construction and maintenance would only occur between December and May each year.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of total taking (*i.e.,* Level B harassment and serious injury/mortality) of ringed seal each year is less than one percent of the population (Table 12).

TABLE 7—AMOUNT OF PROPOSED RINGED SEAL AUTHORIZED TAKE RELATIVE TO POPULATION ESTIMATES (N_{best})

Species	Stock	Population estimate	Total take	Percent of population
Ringed seal	Alaska	170,000	27	<1

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As described in the Marine Mammal section of the document, ringed seal is one of the key subsistence species that is being harvested by native subsistence users. However, the proposed ice roads/trails construction and maintenance would occur far from any subsistence activities and would be separated temporarily from subsistence activities. In addition, Hilcorp and Eni have proposed and NMFS has included several mitigation measures to address potential impacts on the availability of marine mammals for subsistence use. In addition, both Hilcorp and Eni have developed Plans of Cooperation and worked with subsistence use communities in the vicinity of the project areas. Hilcorp and Eni further indicate that they will sign a Conflict Avoidance Agreement to ensure that there will be no unmitigable impact on subsistence uses of marine mammals during the proposed ice roads and ice trails construction and maintenance.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp and Eni's proposed activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp and Eni's ice roads/trails construction and maintenance activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp and Eni regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive

management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Alaska stock of ringed seal, which is listed under the ESA.

The Permit and Conservation Division has requested initiation of Section 7 consultation with the NMFS Alaska Region Protected Resources Division for the issuance of the LOAs. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorizations.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning Hilcorp and Eni's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorizations. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Hilcorp and Eni are the sole entities that would be subject to the requirements in these proposed regulations, and Hilcorp and Eni are not small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. Both companies are global entities. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Alaska, Endangered and threatened species, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Wildlife.

Dated: January 6, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart P to read as follows:

Subpart P—Taking Marine Mammals Incidental to Ice Roads and Ice Trails Construction and Maintenance on Alaska's North Slope

Sec.

217.150 Specified activity and specified geographical region.
217.151 Effective dates.
217.152 Permissible methods of taking.
217.153 Prohibitions.
217.154 Mitigation requirements.
217.155 Requirements for monitoring and reporting.
217.156 Letters of Authorization.
217.157 Renewals and modifications of Letters of Authorization.
217.158—217.159 [Reserved]

Subpart P—Taking Marine Mammals Incidental to Ice Roads and Ice Trails Construction and Maintenance on Alaska's North Slope

§ 217.150 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp Alaska, LLC (Hilcorp) and Eni US Operating Co. Inc. (Eni) and those persons they authorize or fund to conduct activities on their behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction and maintenance of ice roads and ice trails.

(b) The taking of marine mammals by Hilcorp and Eni may be authorized in two Letters of Authorization (LOAs) only if it occurs on Alaska's North Slope.

§ 217.151 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 217.152 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.156, the Holders of the LOAs (hereinafter ''Hilcorp'' and ''Eni'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.150(b) by mortality, serious injury, Level A harassment, or Level B harassment associated with ice road and ice trail construction and maintenance activities, provided the activities are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOAs.

§ 217.153 Prohibitions.

Notwithstanding takings contemplated in § 217.152 and authorized by the LOAs issued under §§ 216.106 of this chapter and 217.156, no person in connection with the activities described in § 217.150 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.156;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.154 Mitigation requirements.

When conducting the activities identified in § 217.150(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.156 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) Hilcorp and Eni must renew, on an annual basis, the Plans of Cooperation (POCs), throughout the life of the regulations;

(2) Copies of any issued LOAs must be in the possession of Hilcorp and Eni, their designees, and work crew personnel operating under the authority of the issued LOAs;

(3) Prior to initiation of sea ice road- and ice trail-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning must receive annual training on implementing mitigation and monitoring measures;

(i) Personnel must be advised that interactions with, or approaching, any wildlife is prohibited;

(ii) Annual training must also include reviewing Hilcorp and Eni's Wildlife Management Plan; and

(iii) In addition to the mitigation and monitoring plans, other topics in the training must include:

(A) Ringed seal identification and brief life history;

(B) Physical environment (habitat characteristics and how to potentially identify habitat); (C) Ringed seal use in the ice road region (timing, location, habitat use, birthing lairs, breathing holes, basking, etc.);

(D) Potential effects of disturbance; and

(E) Importance of lairs, breathing holes and basking to ringed seals

(b) *General mitigation measures throughout the Ice Road/Trail Season* (*December through May*). (1) Ice road/trail speed limits must be no greater than 45 miles per hour (mph); speed limits must be determined on a case-by-case basis based on environmental, road conditions and ice road/trail longevity considerations;

(2) Following existing safety measures, delineators must mark the roadway in a minimum of ¼-mile increments on both sides of the ice road to delineate the path of vehicle travel and areas of planned on-ice activities (*e.g.,* emergency response exercises). Following existing safety measures currently used for ice trails, delineators must mark one side of an ice trail a minimum of every ¼ mile. Delineators must be color-coded, following existing safety protocol, to indicate the direction of travel and location of the ice road or trail;

(3) Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, must be clearly marked or mapped using GPS coordinates of the locations;

(4) Personnel must be instructed to remain in the vehicle and safely continue, if they encounter a ringed seal while driving on the road;

(c) *Additional mitigation measures after March 1st.* In addition to the general mitigation measures listed in § 217.154(b), the following measures must also be implemented after March 1st:

(1) Ice road/trail construction, maintenance and decommissioning must be performed within the boundaries of the road/trail and shoulders, with most work occurring within the driving lane. To the extent practicable and when safety of personnel is ensured, equipment must travel within the driving lane and shoulder areas.

(2) Blading and snow blowing of ice roads must be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. Snow must be plowed or blown from the ice road surface.

(3) In the event snow is accumulating on a road within a 150-ft radius of an identified downwind seal or seal lair, operational measures must be used to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles must not stop within 150 ft of identified seals or within 500 ft of known seal lairs.

(4) To the extent practicable and when safety of personnel is ensured, tracked vehicle operation must be limited to the previously disturbed ice trail areas. When safety requires a new ice trail to be constructed after March 1st, construction activities such as drilling holes in the ice to determine ice quality and thickness, must be conducted only during daylight hours with good visibility.

(5) Ringed seal structures must be avoided by a minimum of 150 ft during ice testing and new trail construction.

(6) Once the new ice trail is established, tracked vehicle operation must be limited to the disturbed area to the extent practicable and when safety of personnel is ensured.

(7) If a seal is observed on ice within 150 ft of the centerline of the ice road/trail, the following mitigation measures must be implemented:

(i) Construction, maintenance or decommissioning activities associated with ice roads and trails must not occur within 150 ft of the observed ringed seal, but may proceed as soon as the ringed seal, of its own accord, moves farther than 150 ft distance away from the activities or has not been observed within that area for at least 24 hours; and

(ii) Transport vehicles (*i.e.,* vehicles not associated with construction, maintenance or decommissioning) may continue their route within the designated road/trail without stopping.

§ 217.155 Requirements for monitoring and reporting.

(a) All marine mammal monitoring must be conducted in accordance with Hilcorp and Eni's Marine Mammal Mitigation and Monitoring Plan (4MP). This plan may be modified throughout the life of the regulations upon NMFS review and approval.

(b) General monitoring measures will be implemented through the entire ice road/trail season including during construction, maintenance, use and decommissioning.

(1) If a ringed seal is observed within 150 ft of the center of an ice road or trail, the operator's Environmental Specialist must be immediately notified with the information provided in paragraph (d) of this section.

(i) The Environmental Specialist must relay the seal sighting location information to all ice road personnel and the company's office personnel responsible for wildlife interaction, following notification protocols described in the company-specific Wildlife Management Plan. All other data will be recorded and logged.

(ii) The Environmental Specialist or designated person must monitor the ringed seal to document the animal's location relative to the road/trail. All work that is occurring when the ringed seal is observed and the behavior of the seal during those activities must be documented until the animal is at least 150 ft away from the center of the road/trail or is no longer observed.

(2) [Reserved]

(c) Monitoring measures that begin after March 1st.

(1) In addition to the general monitoring measures listed in § 217.155(b), the following measures must also be implemented after March 1st:

(i) If an ice road or trail is being actively used, under daylight conditions with good visibility, a dedicated observer (not the vehicle operator) must

conduct a survey along the sea ice road/trail to observe if any ringed seals are within 500 ft of the roadway corridor. The following survey protocol must be implemented:

(A) Surveys must be conducted every other day during daylight hours;

(B) Observers for ice road activities must have received the training described in § 217.154(a) and understand the applicable sections of the Wildlife Interaction Plan;

(C) Observers for ice road activities must be capable of detecting, observing and monitoring ringed seal presence and behaviors, and accurately and completely recording data;

(D) Observers must have no other primary duty than to watch for and report observations related to ringed seals during this survey;

(E) If weather conditions become unsafe, the observer may be removed from the monitoring activity;

(ii) If a ringed seal structure (*i.e.,* breathing hole or lair) is observed within 150 ft of the ice road/trail, the location of the structure must be reported to the Environmental Specialist and:

(A) An observer must monitor the structure every six hours on the day of the initial sighting to determine whether a ringed seal is present.

(B) Monitoring for the seal must occur every other day the ice road is being used unless it is determined the structure is not actively being used (*i.e.,* a seal is not sighted at that location during monitoring).

(d) Reporting requirement at the end-of-season.

(1) A final end-of-season report compiling all ringed seal observations must be submitted to NMFS Office of Protected Resources within 90 days of decommissioning the ice road/trail. The report must include:

(i) Date, time, location of observation;

(ii) Ringed seal characteristics (*i.e.,* adult or pup, behavior (avoidance, resting, etc.));

(iii) Activities occurring during observation including equipment being used and its purpose, and approximate distance to ringed seal(s);

(iv) Actions taken to mitigate effects of interaction emphasizing:

(A) Which mitigation and/or monitoring measures were successful;

(B) Which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals;

(C) The effectiveness and practicality of implementing mitigation and monitoring measures;

(D) Any issues or concerns regarding implementation of mitigation and/or monitoring measures; and

(E) Potential effects of interactions based on observation data; and

(v) Proposed updates (if any) to Wildlife Interaction Plan(s) or Mitigation and Monitoring Measures.

(2) In the event a seal is killed or seriously injured by ice road/trail activities, Hilcorp or Eni must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301–427–8401) and Alaska Region Stranding Coordinator (877–925–7773). The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* cloud over, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(3) In the event ice road/trail personnel discover a dead or injured seal but the cause of injury or death is unknown or believed not to be related to ice road/trail activities, Hilcorp or Eni must report the incident to the NMFS Office of Protected Resources (301–427–8401) and Alaska Region Stranding Coordinator (877–925–7773) within 48 hours of discovery.

§ 217.156 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Hilcorp and Eni must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Hilcorp or Eni may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Hilcorp and Eni must apply for and obtain a modification of the LOA as described in § 217.57.

(e) The LOAs shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOAs shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.157 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.156 for the activity identified in § 217.150(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOAs under these regulations were implemented.

(b) For LOAs modification or renewal requests by the applicants that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOAs in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) The LOAs issued under §§ 216.106 of this chapter and 217.156 for the activity identified in § 217.150(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Hilcorp or Eni regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Hilcorp or Eni's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.156, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 217.158—217.159 [Reserved]

[FR Doc. 2020–00393 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 12
Friday, January 17, 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.

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Tuesday, February 4, 2020, 09:00 a.m. to 11:30 a.m.

ADDRESSES: The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nina-Belle Mbayu, (202) 233–8808.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: January 14, 2020.

Nina-Belle Mbayu,

Acting General Counsel.

[FR Doc. 2020–00727 Filed 1–16–20; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program for Community Facility Loans.

DATES: Comments on this notice must be received by March 17, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by any of the following methods:

- *Mail:* Thomas P. Dickson, Rural Development Innovation Center—Regulations Management Division, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email: *Thomas.Dickson@wdc.usda.gov.*
- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

Title: Community Facility Loans.

OMB Number: 0575–0015.

Expiration Date of Approval: July 31, 2020.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.0 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 2,769.

Estimated Number of Responses per Respondent: 34,050.

Estimated Number of Responses: 12.29.

Estimated Total Annual Burden on Respondents: 41,523 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center—Regulations Management Division, at (202)772–1172, Email: *robin.m.jones@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–00722 Filed 1–16–20; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Tuesday, January 28, 2020, at 2:00 p.m. EST. The purpose of the meeting is to review the recommendations section of their report.

DATES: The meeting will be held on Tuesday, January 28, 2020, at 11:00 a.m. EST.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, DFO, at *afortes@usccr.gov* or 213–894–3437.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800–353–6461, Conference ID: 8330468.

Members of the public can listen to the discussion. This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Office at the above email or street address.

Agenda

I. Welcome
II. Approval of December 11, 2019 Minutes
III. Review Report Draft
  a. Update—DFO
  b. Recommendations
IV. Public Comment
V. Adjournment

Dated: January 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–00726 Filed 1–16–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Wyoming Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (MDT) Tuesday, February 11, 2020. The purpose of this meeting is for the Committee to debrief their hearing on hate crimes.

DATES: Tuesday, February 11, 2020 at 1:00 p.m. MDT.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION:

Public Call Information:

Dial: 800–367–2403.

Conference ID: 6704436.

This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 6704436. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzliAAA.*

Please click on ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discuss Report Outline
III. Discuss Potential Findings and Recommendations
IV. Public Comment
V. Adjournment

Dated: January 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–00723 Filed 1–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on February 4, 2020, 9:30 a.m., (Pacific Standard Time), at the Marriott Marquis, 780 Mission Street, Room: Golden Gate B, San Francisco, CA 94103. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than January 28, 2020.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 10, 2019 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–00737 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce Trade Finance Advisory Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Department of Commerce Trade Finance Advisory Council (TFAC or Council) will hold a meeting via teleconference on Wednesday, January 29, 2020. The meeting is open to the public with registration instructions provided below.

DATES: Wednesday, January 29, 2020, from approximately 1:00 p.m. to 3:00 p.m. Eastern Time (ET). The deadline for members of the public to register, including requests to make comments during the meeting or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. ET on Thursday, January 23, 2020. Registration, comments, and any requests should be submitted via email to *TFAC@trade.gov.*

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including for auxiliary aids) and any written comments should be submitted via email to *TFAC@trade.gov,* or by mail to Yuki Fujiyama, Office of Finance and Insurance Industries, U.S. Department of Commerce Trade Finance Advisory Council, Room 18002, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Yuki Fujiyama, TFAC Designated Federal Officer (DFO), Office of Finance and Insurance Industries, International Trade Administration, U.S. Department of Commerce at (202) 482–3468; email: *Yuki.Fujiyama@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The TFAC was established on August 11, 2016, pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App., and re-chartered for a second two-year term on August 9, 2018. The TFAC serves as the principal advisory body to the Secretary of Commerce on policy matters relating to access to trade finance for U.S. exporters, including small- and medium-sized enterprises, and their foreign buyers. The TFAC is the mechanism by which the Department of Commerce (the Department) convenes private sector stakeholders to identify and develop consensus-based solutions to trade finance challenges. The Council is comprised of a diverse group of stakeholders from the trade finance industry and the U.S. exporting community, as well as experts from academia and public policy organizations.

On Wednesday, January 29, 2020, the TFAC will hold the fourth meeting of its second (2018–2020) charter term via a conference call. During this meeting, members are expected to discuss possible recommendations on policies and programs that can increase awareness of, and expand access to, private export financing resources for U.S. exporters. Meeting minutes will be available within 90 days of the meeting upon request or on the TFAC's website at *www.trade.gov/tfac.*

Public Participation: The meeting will be open to the public and there will be limited time permitted for public comments.

In order to be considered at the meeting, comments from members of the public must be submitted by the deadline identified under the **DATE** caption. Requests from members of the public to participate in the meeting must be received by the same date submitted. Request should be submitted electronically to *TFAC@trade.gov.* Last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit written comments concerning TFAC affairs at any time before or after a meeting. Comments may be submitted to TFAC DFO Yuki Fujiyama, at the contact information indicated above. All comments and statements received, including attachments and other supporting materials, are part of the

public record and subject to public disclosure.

Michael Fuchs,

Acting Director, Office of Finance and Insurance Industries, Industry & Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2020–00747 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with November anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with November anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than November 30, 2020.

	Period to be reviewed
AD Proceedings	
Australia: Hot-Rolled Steel Flat Products,[5] A–602–809	10/1/18–9/30/19
AJU Steel USA Inc.	
BlueScope Steel, Ltd.	
Indonesia: Monosodium Glutamate, A–560–826	11/1/18–10/31/19
PT Cheil Jedang Indonesia	
PT Miwon Indonesia	
Mexico: Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/18–10/31/19
Abastecedora y Perfiles y Tubos, S.A. de C.V.	
ArcelorMittal Tubular Products Monterrey, S.A. de C.V.	
Arceros El Aguila y Arco Metal, S.A. de C.V.	
Burner Systems International De Mexico, S.A. de C.V.	
Conduit, S.A. de C.V.	
Fabricaciones Industriales Tumex, S.A. de C.V.	
fischer Mexicana Stainless Steel Tubing S.A. de C.V.	
fischer Tubtech S.A de C.V.	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

[5] In the initiation notice that published on December 11, 2019 (84 FR 67712) Commerce inadvertently listed certain U.S. companies that are not under review and omitted one company for a which a review was requested. The companies identified herein represent the complete list of companies under review.

	Period to be reviewed
Forza Steel, S.A. de C.V.	
Galvak, S.A. de C.V.	
Impulsora Tlaxcalteca de Industrias, S.A. de C.V.	
Industrias Monterrey S.A. de C.V.	
La Metalica S.A. de C.V.	
Lamina y Placa Comercial, S.A. de C.V.	
Mach 1 Aero Servicios, S. de R.L. de C.V.	
Mach 1 Global Services, Inc.	
Maquilacero, S.A. de C.V.	
Metalsa S.A.	
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Nacional de Acero, S.A de C.V.	
Nova Tube and Coil de Mexico, S. de R.L. de C.V.	
Perfiles y Herrajes LM, S.A. de C.V.	
Precitubo S.A de C.V.	
Productos Especializados de Acero, S.A. de C.V.	
Productos Laminados de Monterrey, S.A. de C.V.	
PYTCO, S.A. de C.V.	
Regiomontana de Perfiles y Tubos, S.A. de C.V.	
Servicios Swecomex, S.A. de C.V.	
Talleres Acerorey, S.A. de C.V.	
Ternium Mexico, S.A. de C.V.	
Tubac, S.A. de C.V.	
Tubacero S. de R.L. de C.V.	
Tuberia Laguna, S.A. de C.V.	
Tuberias Procarsa, S.A. de C.V.	
Tubesa, S.A. de C.V.	
Tubos Omega	
Mexico: Steel Concrete Reinforcing Bar, A–201–844	11/1/18–10/31/19
AceroMex S.A.	
Aceros Especiales Simec Tlaxcala	
Arcelor Mittal	
ArcelorMittal Celaya	
ArcelorMittal Cordoba S.A. de C.V.	
ArcelorMittal Lazaro Cardenas S.A. de C.V.	
Cia Siderurgica De California, S.A. de C.V.	
Compania Siderurgica de California, S.A. de C.V.	
DE ACERO SA. DE CV.	
Deacero, S.A.P.I. de C.V.	
Grupo Simec	
Grupo Villacero S.A. de C.V.	
Industrias CH	
Orge S.A. de C.V.	
Siderurgica Tultitlan S.A. de C.V.	
Simec International S.A. de C.V.	
Talleres y Aceros, S.A. de C.V.	
Ternium Mexico, S.A. de C.V.	
Republic of Korea: Certain Hot-Rolled Steel Flat Products,[6] A–580–883	10/1/18–9/30/19
Marubeni-Itochu Steel Korea Ltd.	
Soon Hong Trading Co.	
The People's Republic of China: Certain Hot-Rolled Carbon Steel Flat Products, A–570–865	11/1/18–10/31/19
Angang Cold Rolling Sheet (Putian)	
Angang Steel Co. Ltd.—Anshan Plant	
Anshan Iron & Steel (Group) Corp	
Anshan Zizhu Heavy Special Steel Co. Ltd.	
Anyang Iron & Steel Group	
Asia Minmetals Machinery Co. Ltd.	
Baihualin Metal Industry Group Co. Ltd.	
Baoshan Iron & Steel Co Ltd. (Baosteel Co. Ltd.)	
Baosteel Group Corp.	
Baosteel Group Xinjiang Bayi Iron & Steel Co. Ltd.	
Baosteel Huangshi Coated and Galvanized Sheet Co. Ltd.	
Baosteel-NSC/ArcelorMittal Automotive Steel Sheet Co. Ltd. BNA	
Baosteel Group Shanghai Meishan Co. Ltd.	
Baosteel Stainless Steel Co. Ltd.	
Baotou Iron and Steel (Group) Co. Ltd.	
Bayi Iron & Steel Co. Ltd.	
Bazhou Wanlu Metal Production Co. Ltd.	
Bazhou Jinghua Metal Products Co. Ltd.	
Beijing Hongyuan Steel Structure Engineering Co. Ltd.	
Beijing Wanhua Metal Rolling Co. Ltd.	
Beitai Iron & Steel Group Co.	
Benlog International Steel Co. Ltd.	

	Period to be reviewed
Benxi Iron & Steel (Group) Special Steel Co. Ltd.	
BlueScope (Suzhou) Co. Ltd.	
Bohai Iron & Steel Group	
Changhe Strip Steel Co. Ltd.	
Changshu Everbright Material Technology Co. Ltd.	
Changshu Huaye Steel Strip Co. Ltd.	
Changshu Jiacheng Coated Steel Co. Ltd.	
Changzhou Dingang Metal Material Co. Ltd.	
Chengde Iron & Steel Group Co. Ltd.	
China Lanjiang Steel Group Co. Ltd.	
Chengdu Iron & Steel Co. Ltd.	
China Oriental Group Co. Ltd.	
China South East Special Steel Group Co. Ltd.	
Chongqing Iron & Steel (Group) Co. Ltd.	
Chuangye Sheet Metal Co. Ltd.	
Dafeng Honglian Cast Steel Co. Ltd.	
Dalian POSCO Steel Co. Ltd.	
Dalian Pujin Steel Plate Co. Ltd.	
Daye Special Steel Co. Ltd.	
Delong Holdings Ltd.	
Dongbei Special Steel Group Co. Ltd.	
Dongguan Yusheng Steel Co. Ltd.	
Dongguan Bo Yunte Metal Co. Ltd.	
Dongyang Global Strip Steel Co. Ltd.	
Fengchi Refractories Co. of Haicheng City (Fengchi Group)	
Foshan Apex Stainless Steel Co. Ltd.	
Foshan Gaoming Jiye Cold Rolling Steel Plate Industrial Co. Ltd.	
Foshan Jinxi Jinlan Cold Rolled Sheets Co. Ltd.	
Foshan Vinmay Stainless Steel Co. Ltd.	
Fujian Casey Steel Group Co. Ltd.	
Fujian Fuxin Special Steel Co. Ltd.	
Fujian Kaijing Steel Development Co. Ltd.	
Fujian Sansteel (Group) Co. Ltd.	
Fujian Wuhang Stainless Steel Products Co. Ltd.	
Fuzhou Ruilian Iron & Steel Co. Ltd.	
Guangdong Hanjiang Steel Plate Co. Ltd.	
Guangdong Huaguan Steel Co. Ltd.	
Guangdong Huamei Co. Ltd.	
Guangdong Qingyuan Dongshang Steel Co. Ltd.	
Guangzhou JFE Steel Sheet Co. Ltd.	
Guangzhou Jinlai Cold-Rolling Strip Steel Co. Ltd.	
Handan Iron & Steel Group Co. Ltd.	
Handan ZhuoLi Fine Steel Plate Co. Ltd.	
Handan Zongheng Iron & Steel Group Co. Ltd.	
Hangzhou Iron & Steel Group Co.	
Haverer Group Ltd.	
Hebei Dexing Sheet Co. Ltd.	
Hebei Dongshan Metallurgy Industry Co. Ltd.	
Hebei Iron & Steel Group Co. Ltd.	
Hebei Luanhe Industrial Group Co. Ltd.	
Hebei Puyang Iron & Steel Group	
Hebei Qian'an Iron & Steel Co. Ltd.	
Hebei Sunpo Metal Products Co. Ltd.	
Hebei Tianjie Pipeline Equipment Co. Ltd.	
Hebei Xinjin Iron & Steel Co. Ltd.	
Hebei Yanshan Iron & Steel Co. Ltd.	
Hebei Zhonggang Steel Co. Ltd.	
Hengshui Jinghua Steel Pipe Co. Ltd.	
Henan Jianhui Machinery Co. Ltd.	
Hualu Steel Co. Ltd.	
Huangshi Shanli Technology Development Co. Ltd.	
Hunan Valin Iron and Steel Group Co. Ltd.	
Hunan Valin Lianyuan Iron & Steel Co. Ltd.	
Hunan Valin Xiangtan Iron & Steel (Group) Co. Ltd.	
Inner Mongolia Huaye Special Steel Co. Ltd.	
Jarway Metal Co Ltd	
JFE Steel Corp (Guangzhou)	
Jiangsu Cold Rolled (Sutor Group)	
Jiangsu Dajiang Metal Material Co. Ltd.	
Jiangsu Gangzheng Steel Sheet Science and Technology Co. Ltd.	
Jiangsu Guoqiang Zinc-Plating Ind. Co. Ltd.	
Jiangsu Jiangnan Cold-Rolled Co. Ltd.	
Jiangsu Jiangnan Industrial Group Co. Ltd.	

	Period to be reviewed
Jiangsu Jida Precision Sheet Co. Ltd.	
Jiangsu Jijing Metal Technology Co. Ltd.	
Jiangsu Qiyuan Group Co. Ltd.	
Jiangsu Shagang Group Co. Ltd.	
Jiangxi Hongdu SteelWorks Co. Ltd.	
Jiangyin Hongrun Strip Steel Co. Ltd.	
Jiangyin Huaxi Iron & Steel Co. Ltd.	
Jiangyin Jinsong Stainless Steel Co. Ltd.	
Jiangsu Xicheng Sanlian Holding Group	
Jiangyin Zongcheng Steel Co. Ltd.	
Jianlong Group	
Jiaxing Kangshida Stainless Steel Co. Ltd.	
JinLan Group	
Jianlong Heavy Industry Group Co. Ltd.	
Jigang Group Co. Ltd.	
Jinan Iron & Steel Co. Ltd.	
Jinxi Jinlan Cold Rolled Sheets Co. Ltd.	
Jinxi Iron & Steel Group Co. Ltd.	
Jiangxi Shanlong Strip Steel Co. Ltd.	
Jiuquin Iron & Steel (Group) Co. Ltd. (JISCO)	
Kunming Iron & Steel (Group) Co. Ltd. (Kisco)	
Laiwu Steel Group Ltd.	
Langfang Fuxin Steel Plate Co. Ltd.	
Lianyuan Iron & Steel Group Co. Ltd.	
Liaoning Jiayi Metals & Minerals Co. Ltd.	
Liainzhong Stainless Steel Corp (LISCO)	
Lingyuan Iron & Steel (Group) Co. Ltd.	
Lin Qing Hongji (Group) Co. Ltd.	
Liuzhou Iron & Steel Co.	
Maanshan Iron & Steel Co. Ltd.	
Nanjing Iron & Steel United Co. Ltd. (NISCO)	
Ningbo Baoxin Stainless Steel Co Ltd.	
Ningbo Iron & Steel Co. Ltd.	
Ningbo Marina Xi Tie Long Industry Co. Ltd.	
Ningbo QiYi Precision Metals Co. Ltd.	
Ningbo Sanshi Metal Co. Ltd.	
Ningbo Yaoyi Stainless Steel Co. Ltd.	
Ningbo Zhongmeng Iron & Steel Co. Ltd.	
North Steel Group	
Pangang Group Chengdu Steel & Vanadium Co. Ltd.	
Panhua Group Co. Ltd.	
Panzhihua Iron & Steel (Group) Co (Pangang Group)	
Pengcheng Special Steel Co. Ltd.	
Pingxiang Iron & Steel Co. Ltd.	
Qingdao Baosen Steel Co. Ltd.	
Qingdao Dtom Metal Products Co. Ltd.	
Qingdao Hanmei Iron & Steel Co. Ltd.	
Qingdao Pohang Stainless Steel Co. Ltd.	
Quindao Weier Plastic Machinery Co. Ltd.	
Quzhou Yuanli Metal Co. Ltd.	
Richang Galvanized Plates Ltd.	
Rizhao Steel Group	
Sanbao Steel Group	
Sansteel MinGuang Co. Ltd.	
SGIS Songshan Co. Ltd.	
Shaanxi Hongda Industry Co. Ltd.	
Shaanxi Longmn Industry Co. Ltd.	
Shanghai Huaye Iron & Steel Group Co. Ltd.	
Shandong Dongding Steel Rolling Company	
Shandong Fada Precision Sheet Co. Ltd.	
Shandong Hong Shengda Steel Plate Co. Ltd.	
Shandong Hua Stainless Steel Co. Ltd.	
Shandong Iron & Steel Group	
Shandong Kerui Steel Plate Co. Ltd.	
Shandong Lu Steel (Group) Co. Ltd.	
Shandong Taishan Iron & Steel Co. Ltd.	
Shandong Yuanda Sheet Industry Tech Co. Ltd.	
Shandong Zhongguan Steel Plate Co. Ltd.	
Shanghai AN LAN Steel Co. Ltd.	
Shanghai Chengtong Precision Strip Co. Ltd.	
Shanghai Krupp Stainless Co. Ltd.	
Shanghai Metal Corp.	
Shanghai STAL Precision Stainless Steel Co. Ltd.	

	Period to be reviewed
Shenzhen Zhaoheng Specialty Steel Co.	
Shougang Group	
Shougang Jingtang United Iron & Steel Co. Ltd.	
Shunde Posco Coated Steel	
Sichuan Changcheng Special Steel (Group) Co. Ltd.	
Sichuan Tranvic Group Co. Ltd.	
Sino-Coalition (Ningbo) Steel Production Co Ltd	
Sinosteel Corp	
South Polar Lights Steel (Shanghai) Co. Ltd.	
Summary International Co. Ltd.	
Taian Fortune Steel Co., Ltd.	
Taizhou Yuxiang Stainless Steel Co. Ltd.	
Taifeng Qiao Metal Products Co. Ltd.	
Tangshan Fengfeng Cold Rolling Strip Steel Co. Ltd.	
Tangshan Ganglu Iron & Steel Co Ltd	
Tangshan Iron & Steel Group Co. Ltd.	
Tangshan Shengcai Steel Co. Ltd.	
Tianjin Daqiuzhuang Steel Co. Ltd.	
Tianjin Haiqing Strip Steel Factory	
Tianjin Hengxing Steel Industry Co. Ltd.	
Tianjin Hongmei Steel Strips Co. Ltd.	
Tianjin Iron & Steel Group Co. Ltd.	
Tianjin Metallurgical No. 1 Steel Group Co. Ltd.	
Tianjin Nanchen Steels Co. Ltd.	
Tianjin Pipe (Group) Corp	
Tianjin Rolling-one Steel Co. Ltd. (TROSCO)	
Tianjin Tiantie Metallurgical Group	
Tianjin Tiantie Zhaer Steel Production Co. Ltd.	
Tianjin Xinyu Color Plate Co. Ltd.	
Tianjin Jiecheng Galvanized Rolling Plate Co. Ltd.	
Tianjin Yibo Steel Making Co. Ltd.	
TISCO—Taiyuan Iron & Steel (Group) Co. Ltd.	
Tonghua Steel Group	
Topsky Steel Industry Co. Ltd.	
Union Steel (China)	
Valin ArcelorMittal Automotive Steel Co. Ltd.	
Venus Holdings Shanghai Co. Ltd.	
WISCO—Wuhan Iron & Steel (Group) Corp	
Wuhan Iron & Steel Group Echeng Iron & Steel Co.	
Wuxi Changjiang Sheet Metal Co. Ltd.	
Wuxi New Dazhong Steel Co. Ltd.	
Wuxi Xindazhong Steel Sheet Co., Ltd.	
Wuxi Zhongcai New Material Co. Ltd.	
Xiehe Group (Zhejiang Concord Group)	
Xinjiang Bayi Iron & Steel Co. Ltd.	
Xinyu Iron & Steel Co. Ltd.	
Xuanhua Steel Group Co. Ltd.	
Yantai Donghai Steel Strip Co. Ltd.	
Yichang Three Gorges Quantong Coated and Galvanized Plate Co. Ltd.	
Yuyao City Shuagniao Metal Strip Co. Ltd.	
Yieh Phui China Tedrnomaterial Co. Ltd.	
Yingkou Panpan Chaoshuo High-Tech Steel Co. Ltd.	
Zhangjiagang New Gangxing Technology Co. Ltd.	
Zhejiang Hengda Industrial Group Co. Ltd.	
Zhejiang Huada Steel Industry Co. Ltd.	
Zhangjiagang Pohang Stainless Steel Co. Ltd.	
Zhangjiangang Kailai Stainless Steel Co. Ltd.	
Zhejiang New Yongmao Stainless Steel Co. Ltd.	
Zhejiang Shunda Weiye Materials Co. Ltd.	
Zhejiang Southeast Metalsheet Co. Ltd.	
Zhejiang Taigang Stainless Steel Co. Ltd.	
Zhejiang Xingristeel Holding Group Co. Ltd.	
Zhejiang Yuanli Group	
Zhejiang Jiang Bozhou Steel Industry Co. Ltd.	
Zhengzhou Tuopu Rolling Technology Co. Ltd.	
Zhejiang Shenghua Steel Co. Ltd.	
Zhicheng Steel Material Co. Ltd.	
Zhongshan Nomura Steel Product Co. Ltd.	
Zibo Fengyang Color Coated Steel Co. Ltd.	
The People's Republic of China: Diamond Sawblades and Parts Thereof, A–570–900	11/1/18–10/31/19
ASHINE Diamond Tools Co., Ltd.	
Bosun Tools Co., Ltd.	
Chengdu Huifeng New Material Technology Co., Ltd.[7]	

	Period to be reviewed
Danyang City Ou Di Ma Tools Co., Ltd.	
Danyang Hantronic Import & Export Co., Ltd.	
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	
Danyang Like Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial and Trading Co., Ltd.	
Hangzhou Kingburg Import & Export Co., Ltd.	
Husqvarna (Hebei) Co., Ltd.[8]	
Hebei XMF Tools Group Co., Ltd.	
Henan Huanghe Whirlwind Co., Ltd.	
Henan Huanghe Whirlwind International Co., Ltd.	
Hong Kong Hao Xin International Group Limited	
Hubei Changjiang Precision Engineering Materials Technology Co., Ltd.	
Hubei Sheng Bai Rui Diamond Tools Co., Ltd.	
Huzhou Gu's Import & Export Co., Ltd.	
Jiangsu Fengtai Single Entity[9]	
Jiangsu Huachang Diamond Tools Manufacturing Co., Ltd.	
Jiangsu Inter-China Group Corporation	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Orient Gain International Limited	
Pantos Logistics (HK) Company Limited	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Hyosung Diamond Tools Co., Ltd.	
Qingyuan Shangtai Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Jingquan Industrial Trade Co., Ltd.	
Shanghai Starcraft Tools Co., Ltd.	
Sino Tools Co., Ltd.	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Baiyi Diamond Tools Co., Ltd.	
Wuhan Sadia Trading Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co., Ltd.[10]	
Wuhan ZhaoHua Technology Co., Ltd.	
Xiamen ZL Diamond Technology Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
ZL Diamond Technology Co., Ltd.	
ZL Diamond Tools Co., Ltd.	
The People's Republic of China: Fresh Garlic, A–570–831	11/1/18–10/31/19
China Jiangsu International Economic Technical Cooperation Corporation	
Hebei Holy Flame International	
Jining Alpha Food Co., Ltd.	
Jinxiang Qingtian Garlic Industries	
Qingdao Maycarrier Import & Export Co., Ltd.	
Qingdao Ritai Food Co., Ltd.	
Shandong Happy Foods Co., Ltd.	
Shijiazhuang Goodman Trading Co., Ltd.	
Weifang Hongqiao International Logistics Co., Ltd.	
Yingxin (Wuqiang) International Trade	
Zhengzhou Harmoni Spice Co., Ltd.	
The People's Republic of China: Forged Steel Fittings, A–570–067	5/1/18–10/31/19
Both-Well (Taizhou) Steel Fittings Co., Ltd.	
Both-Well Taizhou Steel Fittings Co., Ltd.	
Cixi Baicheng Hardware Tools, Ltd.	
Dalian Guangming Pipe Fittings Co., Ltd.	
Eaton Hydraulics (Luzhou) Co., Ltd.	
Eaton Hydraulics (Ningbo) Co., Ltd.	
Jiangsu Forged Pipe Fittings Co., Ltd.	
Jiangsu Haida Pipe Fittings Group Co.	
Jinan Mech Piping Technology Co., Ltd.	
Jining Dingguan Precision Parts Manufacturing Co., Ltd.	
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd.	
Luzhou City Chengrun Mechanics Co., Ltd.	
Ningbo HongTe Industrial Co., Ltd.	
Ningbo Long Teng Metal Manufacturing Co., Ltd.	
Ningbo Save Technology Co., Ltd.	
Ningbo Zhongan Forging Co., Ltd.	
Q.C. Witness International Co., Ltd.	

	Period to be reviewed
Qingdao Bestflow Industrial Co., Ltd.	
Shanghai Lon Au Stainless Steel Materials Co., Ltd.	
Witness International Co., Ltd.	
Xin Yi International Trade Co., Limited	
Yancheng Boyue Tube Co., Ltd.	
Yancheng Haohui Pipe Fittings Co., Ltd.	
Yancheng Jiuwei Pipe Fittings Co., Ltd.	
Yancheng Manda Pipe Industry Co., Ltd	
Yingkou Guangming Pipeline Industry Co., Ltd.	
Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.	
The People's Republic of China: Lightweight Thermal Paper, A–570–920	11/1/18–10/31/19
Avery Dennison (China) Co., Ltd.	
Dong Nam Pack	
Gold Huasheng Paper (Suzhou IP) Co.	
Gold Shengpu Paper Products (Suzhou)	
Henan Jianghe Paper Co. Ltd.	
Jinan Fuzhi Paper Co., Ltd.	
Pax Technology Limited	
Prosper (HK) Co., Ltd.	
Sailing International Limited	
Shenzhen Formers Printing Co., Ltd.	
Shenzhen HDB Network Technology	
Shenzhen Speedy Import & Export Co., Ltd.	
Suzhou Xiandai Paper Production Co.	
SYCDA Company Limited	
Wuxi Honglinxin International Trade	
Xiamen ATP Technology Co. Ltd.	
The People's Republic of China: Monosodium Glutamate, A–570–992	11/1/18–10/31/19
China-Wide Entity	
Bengbu Junyang Business Trade Co., Ltd.	
Fujian Province Jianyang Wuyi Msg Co., Ltd.	
Golden Banyan Foodstuffs Industry Co., Ltd.	
Hong Kong Sungiven International Food Co., Limited	
Hugo International Ltd.	
Hulunbeier Northeast Fufeng Biotechnologies Co., Ltd.	
Jinan Yami Co., Ltd.	
Jining Shangzhuo Food Co., Ltd.	
Kang Hui Trading Limited	
King Cheong Hong International Trade Limited	
Ldco Food Group Limited	
Liangshan Linghua Biotechnology Co., Ltd.	
Lotus Health Industry Holding Group	
Meihua Group International Trading (Hong Kong) Limited	
Neimenggu Fufeng Biotechnologies	
Ningbo Ningtai Make Wine Co., Ltd.	
Qingdao Galike Trading Co., Ltd.	
Sakura Food Group Limited	
Scigate Industries Sdn. Bhd.	
Shandong Linghua Monosodium Glutamate Incorporated Company	
Shijiazhuang Standard Imp&Exp Co.	
Tongliao Meihua Biological Sci-Tech Co., Ltd.	
Vega Pharma Limited	
The People's Republic of China: Multilayered Wood Flooring, A–570–970	12/1/17–11/30/18
Changzhou Hawd Flooring Co., Ltd.[11]	
The People's Republic of China: Polyethylene Terephthalate (Pet) Film, A–570–924	11/1/18–10/31/19
Fuwei Films (Shandong) Co., Ltd.	
Shaoxing Xiangyu Green Packing Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
The People's Republic of China: Seamless Refined Copper Pipe and Tube, A–570–964	11/1/18–10/31/19
Golden Dragon Precise Copper Tube Group, Inc.	
Hong Kong GD Trading Co., Ltd.	
Golden Dragon Holding (Hong Kong) International, Ltd.	
The People's Republic of China: Steel Wire Garment Hangers,[12] A–570–918	10/1/18–9/30/19
United Arab Emirates: Polyethylene Terephthalate (Pet) Film, A–520–803	11/1/18–10/31/19
Flex Middle East FZE	
CVD Proceedings	
India: Stainless Steel Flanges,[13] C–533–878	1/23/18–12/31/18
Echjay Forgings Private Limited	
JAY JAGDAMBA FORGINGS PRIVATE LIMITED	
Jay Jagdamba Ltd.	
JAY JAGDAMBA LIMITED	
JAY JAGDAMBA PROFILE PRIVATE LIMITED	

	Period to be reviewed
India: Welded Stainless Pressure Pipe, C–533–868	1/1/18–12/31/18
Shah Foils Ltd.	
Sun Mark Stainless Pvt. Ltd.	
Sunrise Stainless Private Limited	
Republic of Korea: Certain Hot-Rolled Steel Flat Products,[14] C–580–884	1/1/18–12/31/18
Hyundai Steel Company	
JFE Shoji Trade Korea Ltd.	
The People's Republic of China: Forged Steel Fittings, C–570–068	3/14/18–12/31/18
Apco Pipe Fittings Co., Ltd.	
Both-Well (Taizhou) Steel Fittings Co., Ltd.	
Both-Well Taizhou Steel Fittings Co., Ltd.	
Cixi Baicheng Hardware Tools, Ltd.	
Dalian Guangming Pipe Fittings Co., Ltd.	
Eaton Hydraulics (Luzhou) Co., Ltd.	
Eaton Hydraulics (Ningbo) Co., Ltd.	
Feiting Hi-Tech Piping Zhejiang Co., Ltd	
Hebei Haiyuan Pipe Fittings Co., Ltd.	
Hebei Xinyue High Pressure Flange And Pipe Fitting Co., Ltd.	
Jiangsu Forged Pipe Fittings Co., Ltd.	
Jiangsu Haida Pipe Fittings Group Co., Ltd.	
Jiangyin Tianning Metal Pipe Fitting Co., Ltd.	
Jiangyin Yangzi Fitting Co., Ltd.	
Jinan Mech Piping Technology Co., Ltd.	
Jining Dingguan Precision Parts Manufacturing Co., Ltd.	
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd.	
Luzhou City Chengrun Mechanics Co., Ltd.	
Ningbo HongTe Industrial Co., Ltd.	
Ningbo Long Teng Metal Manufacturing Co., Ltd.	
Ningbo Save Technology Co., Ltd.	
Ningbo Zhongan Forging Co., Ltd.	
Q.C. Witness International Co., Ltd.	
Qingdao Bestflow Industrial Co., Ltd.	
Shanghai Lon Au Stainless Steel Materials Co., Ltd.	
Shanghai Longnai High Pressure Pipe Fittings Co., Ltd.	
Shanghai Tongyang Pipe Fittings Co., Ltd.	
Shanghai Yochoic Pipefittings Co., Ltd.	
Witness International Co., Ltd.	
Xin Yi International Trade Co., Limited	
Yancheng Boyue Tube Co., Ltd.	
Yancheng Haohui Pipe Fittings Co., Ltd.	
Yancheng Jiuwei Pipe Fittings Co., Ltd.	
Yancheng Manda Pipe Industry Co., Ltd.	
Yingkou Guangming Pipeline Industry Co., Ltd.	
Yingkou Liaohe Machinery & Pipe Fittings Co., Ltd.	
Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.	
Turkey: Steel Concrete Reinforcing Bar, C–489–819	1/1/18–12/31/18
Acemar International Limited	
A G Royce Metal Marketing	
Agir Haddecilik A.S.	
As Gaz Sinai ve Tibbi Gazlar A.S.	
Asil Celik Sanayi ve Ticaret A.S.	
Atakas Celik Sanayi ve Ticaret A.S.	
Bastug Metalurji Sanayi A.S.	
Colakoglu Dis Ticaret A.S.	
Colakoglu Metalurji A.S.	
Demirsan Haddecilik Sanayvi Ve Ticaret A.S.	
Diler Dis Ticaret A.S.	
Duferco Investment Services SA	
Duferco Celik Ticaret Limited	
Ege Celik Endustrisi Sanayi ve Ticaret A.S.	
Ekinciler Demir ve Celik Sanayi Anonim Sirketi	
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.[15]	
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	
Izmir Demir Celik Sanayi A.S.	
Kaptan Demir Celik Endustrisi ve Ticaret A.S.	
Kaptan Metal Dis Ticaret Ve Nakliyat A.S.	
Kibar Dis Ticaret A.S.	
Kocaer Haddecilik Sanayi Ve Ticar	
Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi	
MMZ Onur Boru Profil A.S.	
Ozkan Demir Celik Sanayi A.S.	
Wilmar Europe Trading BV	

	Period to be reviewed
Suspension Agreements	
Ukraine: Certain Cut-To-Length Carbon Steel Plate, A–823–808	11/1/18–10/31/19

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[16] available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[17] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[18] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the

[6] These companies were inadvertently combined on a single line in the previous initiation notice. *See December Initiation Notice,* 84 FR at 67712.

[7] Commerce determined that Chengdu Huifeng New Material Technology Co., Ltd. is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd. and for which Commerce received a request for review. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 82 FR 60177 (December 19, 2017).

[8] Commerce determined that Husqvarna (Hebei) Co., Ltd. is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd. and for which Commerce received a request for review. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 78 FR 48414 (August 8, 2013).

[9] Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., comprise the Jiangsu Fengtai Single Entity. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 26912, 26913, n. 5 (June 12, 2017). We received review requests for Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., and Jiangsu Fengtai Tools Co., Ltd.

[10] Commerce determined that Wuhan Wanbang Laser Diamond Tools Co., Ltd. is the successor-in-interest to Wuhan Wanbang Laser Diamond Tools Co. and for which Commerce received a request for review. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 20618 (April 8, 2016).

[11] Commerce inadvertently omitted this company from the initiation notice that published on March 14, 2019 (84 FR 9297).

[12] In the initiation notice that published on December 11, 2019 (84 FR 67712) the period of review for the above referenced case was incorrect. The period listed above is the correct POR for this case.

[13] These companies contained inadvertent spelling or grammatical mistakes and one company was omitted in the prior initiation notice. *See December Initiation Notice,* 84 FR at 67712.

[14] These companies were inadvertently combined on a single line in the previous initiation notice. *See December Initiation Notice,* 84 FR at 67712.

[15] Entries of merchandise produced and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. are excluded from the countervailing duty order. *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination,* 79 FR 54963 at 54964 (September 15, 2014). This initiation notice covers entries of merchandise (1) produced by any other entity and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. or (2) produced by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. and exported by another entity.

[16] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[17] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[18] *See* 19 CFR 351.302.

adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: January 13, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–00748 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051, C–570–052]

Certain Hardwood Plywood From the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP EAPA investigation concerning the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of these orders and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta or Nicolas Mayora, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–2593 or (202) 482–3053, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of AD/CVD orders. Section 517(b)(4)(A) of the Act provides that if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an AD order issued under section 736 of the Act or a CVD order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On September 16, 2019, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7252 [1] which concerns the *Orders* [2] on certain hardwood plywood from China. Specifically, based on an allegation by Plywood Source, a company located in California, CBP has requested that Commerce issue a determination as to whether certain hardwood plywood products produced by Vietnam Finewood Company Limited (Finewood) from China-origin materials is covered merchandise subject to the *Orders.*

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, will begin a new segment of the proceeding by initiating a scope inquiry in accordance with 19 CFR 351.225(b), and based on our finding in that scope inquiry, intends to notify CBP as to whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination, including soliciting information directly from Finewood to conduct our analysis, and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline may be extended if it is not practicable to complete the final determination within 120 days) and will promptly transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.

In addition, Commerce may consider conducting a separate anticircumvention inquiry regarding

[1] *See* CBP's Letter, ''Scope Referral Request for Merchandise under EAPA Cons. Investigation 7252, Imported by Far East America, Inc., CIEL Group, American Pacific Plywood, Interglobal Forest, and Liberty Woods International, Inc., (Importers) and Concerning the Investigation of Evasion of the Antidumping and Countervailing Duty Orders on Hardwood Plywood from the People's Republic of China (A–570–051 and C–570–052),'' dated September 16, 2019. Commerce intends to make available this document and any supporting documents on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

[2] *See Certain Hardwood Plywood from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *see also Certain Hardwood Plywood from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018) (collectively, *Orders*).

this covered merchandise referral if parties submit the necessary information addressing the criteria for an anticircumvention inquiry in accordance with section 781 of the Act. Interested parties are requested to file such comments and information onto the record of this proceeding within 30 days of the publication of this notice in the **Federal Register**.

Interested parties that wish to participate in this segment of the proceeding, and receive notice of the final determination, must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce. Commerce intends to develop its practice and procedures in this area as it gains more experience.

Scope of the Orders on Hardwood Plywood From China

For a complete description of the scope of the orders, *see* the appendix to this notice.

Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.[3] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

Letters of Appearance and APO

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: The parties publicly identified by CBP in the covered merchandise referral (referenced above) are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Within 24 hours of this notice being signed, Commerce placed a request for an APO segment on the record[4] and established an APO segment for use in this proceeding. Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: January 13, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by the *Orders* is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2016 (including any revisions to that standard).

For purposes of the *Orders,* a ''veneer'' is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of the *Orders* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of the *Orders,* without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the in-scope product.

The scope of the *Orders* excludes the following items: (1) Structural plywood (also known as ''industrial plywood'' or ''industrial panels'') that is manufactured to meet U.S. Products Standard PS 1–09, PS 2–09, or PS 2–10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration. *See Multilayered Wood Flooring from the People's Republic of China,* 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and *Multilayered Wood Flooring from the People's Republic of China,* 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by *Multilayered Wood*

[3] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[4] *See* Memorandum, ''Request for Establishment of Administrative Protective Order: Hardwood Plywood from the People's Republic of China (A–570–051 and C–570–052).''

Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as ''solid bamboo''); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an ''Exterior'' or ''Exposure 1'' bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m3 permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of the *Orders* are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Orders* is ''ready to assemble'' (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of the *Orders* are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Orders* are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and (3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of the *Orders* are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of the *Orders* are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of the *Orders* are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

[FR Doc. 2020–00742 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–834]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Final Results of Antidumping Duty Administrative Review; 2016–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), November 14, 2016 through April 30, 2018.

DATES: Applicable January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers ten producers/exporters of the subject merchandise. Commerce selected two companies, NLMK Verona SpA (NVR) and Officine Tecnosider s.r.l. (OTS), for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On July 17, 2019, Commerce published the *Preliminary Results.*[1] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On October 23, 2019, we postponed the final results by 57 days, until January 10, 2020.[3]

Commerce conducted this administrative review in accordance

[1] *See Certain Carbon and Alloy Steel Cut-To Length Plate from Italy: Preliminary Results of Antidumping Duty Administrative Review; 2016–2018,* 84 FR 34121 (July 17, 2019) (*Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Carbon and Alloy Steel Cut-To-Length Plate from Italy: Extension of Deadline for Final Results of 2016–2018 Antidumping Duty Administrative Review,'' dated October 23, 2019.

with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain carbon and alloy steel cut-to-length plate from Italy. The product is currently classified under the following Harmonized Tariff Schedule on the United States (HTSUS) item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all interested parties in the Central Records Unit, room B8024, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average dumping margin for NVR and for those companies not selected for individual review.[4]

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period November 14, 2016 through April 30, 2018:

Producers/exporters	Weighted-average dumping margins (percent)
NLMK Verona SpA	1.44
Officine Tecnosider s.r.l	1.63
Euroflex SpA *	1.57
Evraz Palini e Bertoli SpA *	1.57
Ilva SpA *	1.57
Metalcam SpA *	1.57
Modelleria di Modini Renato *	1.57
Ondulit Italiana SpA *	1.57
Padana Tubi e Profilati Acciaio SpA *	1.57
Riva Fire SpA *	1.57

* Review-Specific Average Rate[5]

Disclosure of Calculations

We intend to disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Where the respondent did not report entered value or reported amounts based on average data, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We further will instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review.[6]

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for NVR and OTS.[7] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[8]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.08 percent, the all-others rate established in the LTFV investigation.[9]

[4] *See* accompanying Issues and Decision Memorandum.

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[6] *See* section 751(a)(2)(C) of the Act.

[7] This rate was calculated as discussed in footnote 5.

[8] *See* section 751(a)(2)(C) of the Act.

[9] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 10, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Margin Calculations
V. Discussion of the Issues
  Comment 1: Product Characteristics and Control Numbers for NVR
  Comment 2: NVR's Constructed Export Price (CEP) Offset Claim
  Comment 3: Whether To Apply Smoothing for NVR's Material Costs
  Comment 4: Universe of Sales for NVR
  Comment 5: Other NVR Adjustments
VI. Recommendation

[FR Doc. 2020–00761 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: Final Results of Antidumping Duty Administrative Review; 2016–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), November 14, 2016 through April 30, 2018.

DATES: Applicable January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Alex Wood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860 or (202) 482–1959, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers eight producers/exporters of the subject merchandise. Commerce selected two companies, Industeel Belgium S.A. (Industeel) and NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A. (collectively, NLMK Belgium), for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On July 17, 2019, Commerce published the *Preliminary Results.*[1] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On October 23, 2019, we postponed the final results by 57 days, until January 10, 2020.[3]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain carbon and alloy steel cut-to-length plate from Belgium. The product is currently classified under the following Harmonized Tariff Schedule on the United States (HTSUS) item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum which accompanies this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all interested parties in the Central Records Unit, room B8024, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average dumping margins for Industeel and NLMK Belgium, and for those companies not selected for individual review.[4]

[1] *See Certain Carbon and Alloy Steel Cut-To Length Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2016–2018,* 84 FR 34129 (July 17, 2019) (*Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,'' dated concurrently with these results (Issues and Decision Memorandum), which is hereby adopted by this notice.

[3] *See* Memorandum, ''Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Extension of Deadline for Final Results of 2016–2018 Antidumping Duty Administrative Review,'' dated October 23, 2019.

[4] *See* accompanying Issues and Decision Memorandum.

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period November 14, 2016 through April 30, 2018:

Producers/exporters	Weighted-average dumping margins (percent)
Industeel Belgium S.A	4.75
NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A	16.14
Hengelhoef Concrete Joints NV *	13.53
Sarens NV *	13.53
Thyssenkrupp Materials Belgium N.V. *	13.53
Universal Eisen und Stahl GmbH *	13.53
Valvan Baling Systems *	13.53
Voestalpine Belgium NV. *	13.53

* Review-Specific Average Rate [5]

Disclosure of Calculations

We intend to disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), where Industeel and NLMK Belgium reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondents did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We further will instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review.[6]

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for Industeel and NLMK Belgium.[7] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[8]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation.[9] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[6] *See* section 751(a)(2)(C) of the Act.

[7] This rate was calculated as discussed in footnote 5.

[8] *See* section 751(a)(2)(C) of the Act.

[9] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

Dated: January 10, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Margin Calculations
V. Discussion of the Issues
Comments Pertaining to Industeel
Comment 1: Accounting for Industeel's Rebate Costs
Comment 2: Write-down of Industeel's Inventory Reserves
Comments Pertaining to NLMK Belgium
Comment 3: Use of Adverse Facts Available
Comment 4: Use of Partial Adverse Facts Available
Comment 5: Difference-in-Merchandise Adjustment
Comment 6: Level of Trade
Comment 7: Alternative Calculation of Indirect Selling Expenses
Comment 8: Calculating Home Market Short-term Borrowing
Comment 9: Calculating U.S. Short-term Borrowing
Comment 10: Adjustments to International Freight Expense
Comment 11: U.S. Billing Adjustment
Comment 12: Adjustments to U.S. Freight Revenue
Comment 13: Home Market Inland Freight and Warehouse Expense Adjustments
VI. Recommendation

[FR Doc. 2020–00760 Filed 1–16–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminary determines that producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) received net countervailable subsidies during the period of review (POR) January 1 through December 31, 2017. Commerce preliminarily determines that the mandatory respondents, Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), and Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (collectively, Kaptan), each received *de minimis* net countervailable subsidies during the POR. This review also includes 15 companies not individually examined, which Commerce preliminarily determines received net countervailable subsidies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Nancy Decker, 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) 482–0196.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2019, Commerce published a notice of initiation of an administrative review of the countervailing duty order on rebar from Turkey.[1] On July 25, 2019, Commerce extended the deadline for the preliminary results to January 9, 2020.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order[4]

The merchandise covered by the *Order* is steel concrete reinforcing bar (rebar) imported in either straight length or coil form regardless of metallurgy, length, diameter, or grade. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

Agir Haddecilik A.S. (Agir), Asil Celik Sanayi ve Ticaret A.S. (Asil), Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege), Ekinciler Demir ve Celik Sanayi Anonim Sirketi (Ekinciler), and Kocaer Haddecilik Sanayi ve Ticar (Kocaer) timely filed no-shipments certifications.[6] U.S. Customs and Border Protection (CBP) did not provide Commerce with any contrary information. Because there is no evidence on the record to indicate that

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159, 2168 (February 6, 2019). A clarification regarding the initiation was also published. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297, 9307 n.11 (March 14, 2019).

[2] *See* Memorandum, ''Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results in 2017 Countervailing Duty Administrative Review,'' dated July 25, 2019.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review of and the Preliminary Intent to Rescind, in Part: Steel Concrete Reinforcing Bar from the Republic of Turkey; 2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order,* 79 FR 65926 (November 6, 2014) (*Order*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* Agir's letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819): Countervailing Duty Administrative Review (1/1/17–12/31/17),'' dated February 22, 2019; Asil's letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819): Countervailing Duty Administrative Review (1/1/17–12/31/17),'' dated February 22, 2019; Ege's letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819), Countervailing Duty Administrative Review (1/1/17–12/31/17), Certification Of No Sales,'' dated March 5 2019; Ekinciler's letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819): Countervailing Duty Administrative Review (1/1/17–12/31/17),'' dated February 21, 2019; and Kocaer's letter, ''2017 Countervailing Duty Administrative Review Involving Steel Concrete Reinforcing Bar from the Republic of Turkey: Notice of No Sales,'' dated February 21, 2019.

Agir, Asil, Ege, Ekinciler, or Kocaer had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the review with respect to these companies.

Entries of merchandise produced and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) are not subject to countervailing duties under this *Order* because Commerce's final determination with respect to this producer/exporter combination was negative.[7] However, any entries of merchandise produced by any other entity and exported by Habas or produced by Habas and exported by another entity are subject to this *Order.*

Because there is no evidence on the record of entries of merchandise produced by another entity and exported by Habas, or entries of merchandise produced by Habas and exported by another entity, we preliminarily determine that Habas is not subject to this administrative review. Therefore, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the review with respect to Habas.

A final decision on whether to rescind the review of Agir, Asil, Ege, Ekinciler, or Kocaer, and Habas will be made in the final results of this administrative review.

Companies Not Selected for Individual Review

To determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[8] In this review, we preliminarily calculated *de minimis* subsidy rates for each of the mandatory respondents (*i.e.,* Icdas and Kaptan) during the POR. In countervailing duty proceedings, where the number of respondents being individually examined has been limited, Commerce has determined that a ''reasonable method'' to use to determine the rate applicable to companies that were not individually examined when all the rates of selected mandatory respondents are zero or *de minimis* is to assign to the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available.[9] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, Commerce has found it appropriate to apply that calculated rate to the non-selected respondent, even when that rate is zero or *de minimis.*[10]

In the most recently completed administrative review of this order, we calculated a net subsidy rate of 1.82 percent *ad valorem* for Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S.[11] Therefore, consistent with Commerce's practice, described above, we are assigning the rate of 1.82 percent *ad valorem* to Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S., based on the companies' rate calculated in the prior review.

With regard to the 13 remaining non-selected companies, for which an individual rate was not calculated, we are assigning the rate of 2.29 percent *ad valorem,* which is the average of the above *de minimis* rates calculated in the last review.[12]

Preliminary Results of the Review

We preliminarily find that the net countervailable subsidy rates for the period January 1, 2017 through December 31, 2017, are as follows:

Company	Subsidy rate *ad valorem* (percent)
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. and its cross-owned affiliates [13]	* 0.41
Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S. and their cross-owned affiliates [14]	* 0.19
Acemar International Limited	2.29
A G Royce Metal Marketing	2.29
As Gaz Sinai ve Tibbi Gazlar A.S	2.29
Bastug Metalurji Sanayi AS	2.29
Colakoglu Dis Ticaret A.S	1.82
Colakoglu Metalurji A.S	1.82
Demirsan Haddecilik Sanayi Ve Ticaret AS	2.29
Diler Dis Ticaret AS	2.29
Duferco Investment Services SA	2.29
Duferco Celik Ticaret Limited	2.29
Izmir Demir Celik Sanayi A.S	2.29
Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi	2.29
MMZ Onur Boru Profil A.S	2.29
Ozkan Demir Celik Sanayi A.S	2.29
Wilmar Europe Trading BV	2.29

* (*de minimis*).

[7] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 79 FR 54963, 54964 (September 15, 2014).

[8] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[9] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part,* 79 FR 51140, 51141 (August 27, 2014); and *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at ''Non-Selected Rate.''

[10] *Id.*

[11] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016,* 84 FR 36051, 36052 (July 26, 2019).

[12] *Id.* The average of the two calculated rates that were above *de minimis* equals 2.29 percent.

[13] Commerce preliminarily finds the following companies to be cross-owned with Icdas: Mardas Marmara Deniz Isletmeciligi A.S., Oraysan Insaat Sanayi ve Ticaret A.S., Artmak Denizcilik Ticaret ve Sanayi A.S., Artım Demir Inşaat Turizm Sanayi Ticaret Ltd. Sti., Anka Entansif Hayvancılık Gıda Tarım Sanayi ve Ticaret A.S., and Eras Taşımacılık Taahhut Insaat ve Ticaret A.S.

[14] Commerce preliminarily finds the following companies to be cross-owned with Kaptan: Kaptan Is Makinalari Hurda Alim Satim Ltd. Sti, and Efesan Demir San. Ve Tic. A.S.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in the final results is *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to the parties in this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice.[15] Interested parties may submit written arguments (case briefs) on the preliminary results within 30 days of publication of the preliminary results, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[16] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[17]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days after the date of publication of this notice.[18] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If Commerce receives a request for a hearing, we will inform parties of the scheduled date for the hearing, which will be held at the main Commerce building at a time and location to be determined.[19] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after publication of these preliminary results.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: January 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Intent To Rescind the 2017 Administrative Review, in Part
IV. New Subsidy Allegation
V. Non-Selected Rate
VI. Scope of the Order
VII. Subsidies Valuation Information
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2020–00743 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* 19 CFR 351.224(b).

[16] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[17] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XU006]

Marine Fisheries Advisory Committee

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

ACTION: Notice; extension of nomination period.

SUMMARY: NMFS is extending the period for submission of nominations for appointment to a new Marine Fisheries Advisory Committee (MAFAC) task force to support its advisory work for the Secretary of Commerce on living marine resource matters. The task force will provide expert advice on the generation, delivery, and use of electronically reported data from private recreational anglers to assist NMFS in fulfilling its mission activities. NMFS will appoint the members in consultation with MAFAC and they will serve for a term of up to two (2) years. The extended comment period closes on February 21, 2020.

DATES: Nominations must be received at the appropriate address or email mailbox (see **ADDRESSES**) on or before February 21, 2020.

ADDRESSES: Nominations should be sent to Heidi Lovett, NMFS Office of Policy, 1315 East West Highway, Silver Spring, MD 20910 or to *heidi.lovett@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Heidi Lovett, (301) 427–8046; email: *heidi.lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: MAFAC is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. On November 20, 2019, MAFAC announced it would be establishing a Task Force to provide it, and subsequently NMFS, expert advice on the generation, delivery, and use of electronically reported data from private recreational anglers to assist NOAA Fisheries in fulfilling its mission activities. The scope of the Recreational Electronic Reporting Task Force will fall within the objectives and scope of the MAFAC. In response, NMFS has received a limited number of qualified applications. NMFS has decided to extend the period to submit nominations by 30 days to Friday, February 21, 2020 to allow the submission of additional applications.

Recreational Electronic Reporting Task Force

This Recreational Electronic Reporting Task Force is being created to provide MAFAC, and subsequently NMFS, advice on fulfilling the agency's central role in providing useable high quality, accurate data on recreational fisheries. Task Force advice will support and contribute to the development of an Agency roadmap to advance and guide implementation, where appropriate, of electronic data collection in private recreational fisheries (both shore and boat mode angling). The initial actions for consideration by the Task Force include:

• Identify and prioritize known data gaps relative to NOAA Fisheries' role in

supporting management of marine recreational fisheries that could be addressed through mandatory or voluntary private recreational angler electronic reporting programs.

• Identify realistic and achievable goals for voluntary (also known as opt-in) and mandatory electronic reporting for private recreational anglers, as well as associated challenges and solutions, where identifiable.

• Provide recommendations on how the aforementioned goals could be best supported or achieved by NOAA Fisheries.

The Task Force will report to MAFAC and will not provide advice or work products directly to NMFS. Recommendations generated by this Task Force's efforts will not result in any regulatory decision, or obligate any party to undertake certain activities.

This Task Force will consist of approximately 10 individuals who have demonstrated subject matter expertise and experience in one or more relevant fields including, but not limited to, sampling statistics, survey methodologies, citizen science, fishery stock assessment science, electronic monitoring or reporting, fisheries management, database development and/or management, mobile technology applications (apps), and marine recreational fishing. It is not intended that all Task Force members be scientists or researchers; however, other members should have experience with issues related to the generation, delivery, and or use of opt-in electronic data, public attitudes about participating in such programs, or similar ecological self-reporting data systems from which parallels can be drawn.

It is intended that the Task Force membership represent a diversity of the overall expertise and experience being sought. It will be established for an initial period of two (2) years with a possibility of extending that term if deemed necessary by NMFS and MAFAC. Task Force members should be able to fulfill the time commitments required for up to one meeting per month (mostly by webinar or teleconference and potentially in-person), and interim work as necessary. Members of the Task Force are not compensated for their services, but will upon request be provided travel and per diem expenses as authorized by 5 U.S.C. 5701 *et seq.* To view the full Recreational Electronic Reporting Task Force Terms of Reference, please visit *https://www.fisheries.noaa.gov/national/partners/marine-fisheries-advisory-committee-subcommittees-and-task-forces#task-forces.*

Nomination Materials

Each nomination submission must include: Resume or curriculum vitae of the nominee and a cover letter, not to exceed 3 pages, that describes the nominee's interest in serving on the Task Force and how the nominee's expertise, experience, and other qualifications relate to one or more relevant fields noted in the prior section. Self-nominations are acceptable. The following contact information should accompany each nominee's submission: Full name, address, telephone number, and email address.

Nominations should be sent to (see **ADDRESSES**) and must be received by February 21, 2020. Information about MAFAC, its Committee charter, current membership, and activities can be viewed on the NMFS' website at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee.*

Dated January 14, 2020.

Jennifer Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2020–00751 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA011]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will hold a methodology review meeting to evaluate and review fishery independent visual survey methodologies, using remotely operate vehicles (ROVs), for nearshore groundfish species off the states of Oregon and California. The meeting is open to the public.

DATES: The meeting will be held Tuesday, February 4 through Thursday, February 6, 2020. The meeting will begin at 8:30 a.m., Pacific Standard Time, each day and will continue until 5 p.m., or until business for the day has been completed.

ADDRESSES: The Pacific Council methodology review meeting will be held in the Conference Room (Room 188) of the NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 McAllister Way, Santa Cruz, CA 95060; contact and telephone: Dr. John Field, (831) 420–3907. Official government issued identification (*e.g.,* state issued identification card, federal identification card, etc.) will be required in order to enter the building.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Phillips, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The purpose of the Pacific Council methodology review meeting is to evaluate and review fishery independent visual survey methodologies, using ROVs, for nearshore groundfish species off the states of Oregon and California. West Coast nearshore groundfish stock assessments have identified the current lack of fishery-independent data sources as a research and data need. Both Oregon and California have conducted ROV surveys of rockfish in nearshore areas, focusing on rocky reef habitat, and, in California, on areas inside and outside of Marine Protected Areas.

The goals and objectives specific to the review of the new ROV survey methodologies are to: (1) Evaluate the sampling design used in recent (2010–19) ROV surveys conducted by the states of Oregon and California; (2) evaluate proposed methods to develop indices or estimates of abundance for these ROV surveys, including using habitat/substrate type and Marine Protected Area designation as covariates; (3) evaluate proposed methods to estimate size/age compositions of observed individuals of each species; and (4) identify potential impediments to developing independent indices or estimates of abundance using these ROV surveys and incorporating them into stock assessments.

This methodology review will likely provide the basis for future ROV surveys and the development of indices or estimates of abundance for those areas surveyed in Oregon and California, as well as the expansion of such methods to other areas within those states and/or within Washington State.

No management actions will be decided by the Pacific Council methodology review meeting participants. The Pacific Council methodology review meeting participants' role will be development of recommendations and reports for consideration by the Pacific Council's Scientific and Statistical Committee and

the Pacific Council at their June meeting in San Diego, CA.

Although nonemergency issues not contained in the meeting agenda may be discussed, 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 Fishery Conservation and Management Act, provided the public has been notified of the intent of the Pacific Council meeting participants to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov,* (503) 820–2412) at least 10 days prior to the meeting date.

Dated: January 14, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–00766 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Exploration Advisory Board

AGENCY: Office of Ocean Exploration and Research (OER) National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (DOC).

ACTION: Solicitation of applications.

SUMMARY: NOAA is soliciting applications to fill up to six membership vacancies on the Ocean Exploration Advisory Board (OEAB). The new OEAB members will serve initial three-year terms, renewable once.

DATES: Application materials must be received no later than February 3, 2020.

ADDRESSES: Submit application materials to Christa Rabenold via mail or email. Mail: NOAA/OER, 1315 East West Highway, SSMC3 Rm. 10310, Silver Spring, MD 20910; Email: *christa.rabenold@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: David McKinnie, OEAB Designated Federal Officer, NOAA/OER, 7600 Sand Point Way NE, Seattle, WA 98115; 206–526–6950; *david.mckinnie@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA is soliciting applications to fill up to six vacancies on the OEAB with individuals demonstrating expertise in areas relevant to the statutory purpose of the OEAB and the ocean exploration act established under 33 U.S.C. 3401 *et seq.* The new OEAB members will serve initial three-year terms, renewable once.

The purpose of the OEAB is to advise the NOAA Administrator on matters pertaining to ocean exploration. The OEAB functions as an advisory body in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., with the exception of section 14. It reports to the NOAA Administrator, as directed by 33 U.S.C. 3405.

The OEAB consists of approximately ten members, including a chair and co-chair(s), designated by the NOAA Administrator in accordance with FACA requirements and the terms of the approved OEAB Charter.

The OEAB was established:

(1) To advise the Administrator on priority areas for survey and discovery;

(2) To assist the program in the development of a five-year strategic plan for the fields of ocean, marine, and Great Lakes science, exploration, and discovery;

(3) To annually review the quality and effectiveness of the proposal review process established under section 12003(a)(4); and

(4) To provide other assistance and advice as requested by the Administrator.

OEAB members are appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable expenses incurred in performing such duties but will not be reimbursed for their time. All OEAB members serve at the discretion of the NOAA Administrator.

The OEAB meets three to four times each year, exclusive of subcommittee, task force, and working group meetings.

As a Federal Advisory Committee, the OEAB's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as including the interests of geographic regions of the country and the diverse sectors of our society.

For more information about the OEAB, please visit *https://oeab.noaa.gov.*

Although the OEAB reports directly to the NOAA Administrator, OER, which is part of the NOAA Office of Oceanic and Atmospheric Research, provides staffing and other support for the OEAB. OER's mission is to explore the ocean for national benefit.

OER:

- Explores the ocean to make discoveries of scientific, economic, and cultural value, with priority given to the U.S. Exclusive Economic Zone and Extended Continental Shelf;
- Promotes technological innovation to advance ocean exploration;
- Provides public access to data and information;
- Encourages the next generation of ocean explorers, scientists, and engineers; and,
- Expands the national ocean exploration program through partnerships.

For more information about OER, please visit *https://oceanexplorer.noaa.gov.*

Applications: An application is required to be considered for OEAB membership. To apply, please submit (1) your full name, title, institutional affiliation, and contact information (mailing address, email address, telephone and fax numbers); (2) a short description of your qualifications relative to the statutory purpose of the OEAB and the ocean exploration act established under 33 U.S.C. 3401 *et seq.;* (3) a resume or curriculum vitae (maximum length four pages); and (4) a cover letter stating your interest in serving on the OEAB and highlighting specific areas of expertise relevant to the purpose of the OEAB.

Dated: December 31, 2019.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–00764 Filed 1–16–20; 8:45 am]

BILLING CODE 3510–KA–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 16 January 2020, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW, Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above

address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: January 8, 2020 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2020–00418 Filed 1–16–20; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletion from the Procurement List.

SUMMARY: The Committee is proposing to delete a product from the Procurement List that was furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: February 16, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product is proposed for deletion from the Procurement List:

Product

NSN—Product Name:
3990CAAA9243—Pallet, Demo, Sideboard, 30″ x 44″

Mandatory Source of Supply: Bona Vista Programs, Inc., Kokomo, IN

Contracting Activity: W39Z STK REC ACCT–CRANE AAP, CRANE, IN

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–00702 Filed 1–16–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action adds products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* February 16, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

On 12/13/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
MR 11052—Grocery Shopping Tote Bag, Laminated, Spring, Yellow, Small

Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
6515–00–481–2049—Bag, Gravity Enteral Feeding
6530–00–761–0932—Urine Collection Bag, 32 oz Capacity
6530–00–761–0936—Urine Collection Bag, 26 oz Capacity
6530–00–NSH–0028—Bag, Urine Collection, Enhanced, Large, 32 oz.
6530–00–NSH–0029—Bag, Urine Collection, Enhanced, Medium, 26 oz.
6530–00–NSH–0030—Bag, Urine Collection, Enhanced, Moleskin Backing, Large, 32 oz.
6530–00–NSH–0031—Bag, Urine Collection, Enhanced, Inlet Extension, Large, 32 oz.
6530–00–NSH–0032—Bag, Urine Collection, Enhanced, Drain Extension, Large, 32 oz.
6530–00–NSH–0033—Bag, Urine Collection, Enhanced, Moleskin Backing, Inlet Extension, Large, 32 oz.
6530–00–NSH–0034—Bag, Urine Collection, Enhanced, Moleskin, Drain Extension, Large, 32 oz.
6530–00–NSH–0035—Bag, Urine Collection, Enhanced, Inlet and Drain Extension, Large, 32 oz.
6530–00–NSH–0036—Bag, Urine Collection, Enhanced, Moleskin, Inlet and Drain Extension, Large, 32 oz.
6530–00–NSH–0037—Bag, Urine Collection, Enhanced, Moleskin, Medium, 26 oz.
6530–00–NSH–0038—Bag, Urine Collection, Enhanced, Inlet Extension, Medium, 26 oz.
6530–00–NSH–0039—Bag, Urine Collection, Enhanced, Drain Extension, Medium, 26 oz.
6530–00–NSH–0040—Bag, Urine Collection, Enhanced, Moleskin, Inlet Extension, Medium, 26 oz.
6530–00–NSH–0041—Bag, Urine Collection, Enhanced, Moleskin, Drain Extension, Medium, 26 oz
6530–00–NSH–0042—Bag, Urine Collection, Enhanced, Inlet and Drain Extension, Medium, 26 oz.
6530–00–NSH–0043—Bag, Urine Collection, Enhanced, Moleskin, Inlet and Drain Extension, Medium, 26 oz.
6530–00–NSH–0044—Fecal Incontinence Collection Bag, Clear Plastic, Small, 10 oz.
6530–00–NSH–0045—Fecal Incontinence Collection Bag, Clear Plastic, Large, 19 oz.

Mandatory Source of Supply: Work, Incorporated, Dorchester, MA

Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

Services

Service Type: Recycling Service
Mandatory for: Cape Cod National Seashore, Wellfleet, MA
Mandatory Source of Supply: capeAbilities, Inc., Hyannis, MA
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Toner Cartridge Remanufacturing
Mandatory for: Bighorn National Forest, Sheridan, WY
Mandatory Source of Supply: Community Option Resource Enterprises, Inc. (COR Enterprises), Billings, MT
Contracting Activity: AGRICULTURE, DEPARTMENT OF, PROCUREMENT OPERATIONS DIVISION

Service Type: Janitorial/Custodial
Mandatory for: Blue Mountain: Crazy Canyon, Pattee Canyon and Howard Creek, Missoula, MT
Contracting Activity: AGRICULTURE, DEPARTMENT OF, PROCUREMENT OPERATIONS DIVISION

Service Type: Document Destruction
Mandatory for: Department of Agriculture, Farm Service Agency, Farm Service Agency: 6501 Beacon Drive, Kansas City, MO
Mandatory Source of Supply: JobOne, Independence, MO
Contracting Activity: FARM SERVICE AGENCY, KANSAS CITY ACQUISITION BRANCH

Service Type: Mailing Services
Mandatory for: Government Printing Office—Laurel Warehouse: 8610 & 8660 Cherry Lane, Laurel, MD
Mandatory Source of Supply: Alliance, Inc., Baltimore, MD
Contracting Activity: Government Printing Office

Service Type: Grounds Maintenance
Mandatory for: The Kennedy Center, Washington, DC
Mandatory Source of Supply: Lt. Joseph P. Kennedy Institute, Washington, DC
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Operation of Postal Service Center
Mandatory for: Andrews Air Force Base, Andrews AFB, MD
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Service Type: Grounds Maintenance
Mandatory for: Fort McPherson, Fort McPherson, GA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FDO FT SAM HOUSTON

Service Type: Custodial Services
Mandatory for: DHS—Customs & Border Protection: 5401 Coffee Drive, New Orleans, LA
Mandatory Source of Supply: Goodworks, Inc., New Orleans, LA
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, PROCUREMENT DIRECTORATE

Service Type: Janitorial Services
Mandatory for: USDA, ARS Grassland, Soil and Water Research Laboratory, 808 East Blackland Road, Temple, TX
Mandatory Source of Supply: Rising Star Resource Development Corporation, Dallas, TX
Contracting Activity: AGRICULTURAL RESEARCH SERVICE, USDA ARS SPA 7MN1

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–00701 Filed 1–16–20; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0008]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is publishing this notice seeking comment on a Generic Information Collection titled, ''Small Business Compliance Cost Survey under the Generic Information Collection Plan'' titled, ''Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations'' prior to requesting Office of Management and Budget (OMB) approval of this collection of information.

DATES: Written comments are encouraged and must be received on or before February 18, 2020 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Regulations.gov:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2020–0008 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Small Business Compliance Cost Survey.

OMB Control Number: 3170–0032.

Type of Review: Request for approval of a generic information collection under an existing Generic Information Collection Plan.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: 60.

Abstract: Under section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Equal Credit Opportunity Act was amended to require financial institutions, subject to a regulation to be issued by the Bureau to compile, maintain, and report to the Bureau certain information about applications for credit made by women-owned, minority-owned, and small businesses. As part of the statutory requirements of our rulemaking process, the Office of Research has developed a cost of compliance survey in an effort to more accurately measure the costs associated with rule implementation. More specifically, the objective of this survey is to solicit, from institutions offering small business credit products that could potentially be covered by this rule, information about potential one-time costs to prepare to collect and report data. This survey will not cover potential on-going costs from actually collecting and reporting data.

Request for Comments: The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility,

and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be submitted to OMB as part of its review of this request. All comments will become a matter of public record.

Dated: January 14, 2020.

Darrin King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2020–00744 Filed 1–16–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2020–HQ–0001]

Proposed Collection; Comment Request

AGENCY: Assistant Secretary of the Army for Financial Management & Comptroller, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Assistant Secretary of the Army for Financial Management & Comptroller announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 17, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to ASA (FM&C), Attn: Mr. Roger A. Pillar, 2521 S Clark St., Suite 7159, Arlington, VA 22202, or call Mr. Roger A. Pillar, GFEBS Functional Director at 703–545–8855.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Supplier Self-Services (SUS); OMB Control Number 0702–0126.

Needs and Uses: The information collection requirement via SUS is necessary to reduce the amount and complexity of required input by vendors that manually enter invoice data into Wide Area Workflow (WAWF) (not those utilizing Electronic Data Interchange (EDI)). By pre-populating fields with accurate and up-to-date contract information, vendors are required to input significantly less data. Additionally, SUS simultaneously performs a front-end validation of submitted data, thus ensuring less manual intervention and fewer interest penalties incurred by the government.

Affected Public: Business or Other-For-Profit.

Annual Burden Hours: 10,402.

Number of Respondents: 8,668.

Responses per Respondent: 12.

Annual Responses: 104,016.

Average Burden per Response: 6 minutes.

Frequency: On occasion.

SUS leverages a DoD portal developed by WAWF known as ''OneStop'' that facilitates WAWF's interaction with ERPs. Respondents are vendors that continue to utilize WAWF as the mandated single point of entry and for viewing historical records, but are routed seamlessly to the SUS module for invoice data entry referencing the ERP contract data.

Dated: January 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00709 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0011]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DFAS announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 17, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Services—Cleveland, 1240 East 9th Street, Cleveland, OH 44199, ATTN: Mr. Charles Moss, *Charles.moss@dfas.mil,* 216–204–4426.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Child Annuitant's School Certification; DD Form 2788; OMB Control Number 0730–0001.

Needs and Uses: In accordance with 10 U.S.C. 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

Affected Public: Individuals or households.

Annual Burden Hours: 7,200 hours.

Number of Respondents: 3,600.

Responses per Respondent: 2.

Annual Responses: 7,200.

Average Burden per Response: 1 hour.

Frequency: Once each semester of full time school, ages 18 to 22.

The Child Annuitant's School Certification form is submitted to the child for completion and returned to this agency. The child will certify as to his or her intent for future enrollment and a school official must certify on the past or present school enrollment of the child. By not obtaining school certification, overpayment of annuities to children would exist. This information may be collected from some schools which are non-profit institutions such as religious institutions. If information is not received after the end of each school enrollment, over disbursements of an annuity would be made to a child who elected not to continue further training or study.

Dated: January 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00679 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0080]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Discharge of Member or Survivor of Group Certified to have Performed Active Duty with the Armed Forces of the United States; DD Form 2168; OMB Control Number 0704–0100.

Type of Request: Reinstatement.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 250 hours.

Needs and Uses: The purpose of this information collection is to assist the Secretary of a Military Department or United States Coast Guard (USCG) in determining if an applicant was a member of a group that has been found to have performed active military service. If the information requested on the DD Form 2168, Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States, is compatible with that of a corresponding approved group and the applicant can provide supporting evidence, he or she will receive veteran's status in accordance with the provisions of DoD Directive 1000.20, as established by 38 U.S.C. 106. The information from the DD Form 2168 will be extracted by the appropriate military personnel office and used to complete the DD Form 214, ''Certificate for Release or Discharge from Active Duty.'' The Veterans Administration uses information on the DD Form 2168 to verify benefits eligibility. The form can be electronically accessed and downloaded from the following Defense Link Publication site: *http://www.dod.gov/pubs/.* The form can be filled out electronically using a computer, or if a computer cannot be used, it can be filled out by a typewriter or printed by hand. The form must be submitted in original copy only, and additional documentation to support the information on the form must be included. The completed application will be mailed to the appropriate Service address listed on the back of the form.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00699 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0115]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Reference; DD Form 370; OMB Control Number 0704–0167.

Type of Request: Extension.

Number of Respondents: 6,500.

Responses per Respondent: 1.

Annual Responses: 6,500.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 1,083.

Needs and Uses: The information collection requirement is necessary to obtain personal reference data, in order to request a waiver, on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry into the Armed Forces of the United States. The DD Form 370 is used to obtain references information evaluating the character, work habits, and attitudes of an applicant from a person of authority or standing within the community.

Affected Public: Business or other For-Profit; Not-For-Profit institutions; Individuals or Households; State, Local, or Tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00706 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0010]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel & Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 17, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Office of Family Readiness Policy, ATTN: LaTarsha Yeargins, Spouse Education & Career Opportunities Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350–2300.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military Spouse Employment Partnership (MSEP) Career Portal; OMB Control Number 0704–0563.

Needs and Uses: The information collection requirement is necessary to allow MSEP Partners to directly search for employment opportunities with MSEP Partners.

Affected Public: Individuals or Households, Business or Other For-Profit.

Annual Burden Hours: Military Spouses: 16,500.

MSEP Partners: 125.

Businesses/Companies: 38.

Total: 16,663.

Number of Respondents: Military Spouses: 22,000.

MSEP Partners: 300.

Businesses/Companies: 150.

Total Respondents: 22,450.

Responses per Respondent: 1.

Annual Responses: 22,450.

Average Burden per Response: Military Spouses: 45 minutes.

MSEP Partners: 25 Minutes.

Businesses/Companies: 15 minutes.

Frequency: Military Spouses: On occasion.

MSEP Partners: On occasion.

Businesses/Companies: Once.

The Military Spouse Employment Partnership (MSEP) Career Portal is the sole web platform utilized to connect military spouses with companies seeking to hire military spouse employees. Participating companies, called MSEP Partners, are vetted and approved participants in the MSEP Program and have pledged to recruit, hire, promote and retain military spouses in portable careers. MSEP is a targeted recruitment and employment partnership that connects American businesses with military spouses who possess essential 21st-century workforce skills and attributes and are seeking portable, fulfilling careers. The MSEP program is part of the overall Spouse Education and Career Opportunities (SECO) program which falls under the auspices of the office of the Deputy Assistant Secretary of Defense for Military Community & Family Policy.

This program was developed in compliance with 10 U.S. Code 1784 Employment Opportunities for Military Spouses which states:

(f) Private-Sector Employment.—The Secretary of Defense—

(1) shall seek to develop partnerships with firms in the private sector to enhance employment opportunities for spouses of members of the armed forces and to provide for improved job portability for such spouses, especially in the case of the spouse of a member of the armed forces accompanying the member to a new geographical area because of a change of permanent duty station of the member; and

(2) shall work with the United States Chamber of Commerce and other appropriate private-sector entities to facilitate the formation of such partnerships.

Dated: January 14, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00728 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0012]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DFAS announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 17, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Services, P.O. Box 998002, ATTN: DFAS–HGA/CL, Scott Lafferty, Deputy Assistant General Counsel for Garnishment Operations, Cleveland, OH 44199–8002; via email at *scott.w.lafferty.civ@mail.mil* or at (216) 522–5118.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Former Spouse Payments From Retired Pay, DD Form 2293; OMB Number 0730–0008.

Needs and Uses: The information collection requirement is necessary to provide DFAS with the basic data needed to process court orders for division of military retired pay as property or order alimony and child support payment from that retired pay per Title 10 U.S.C. 1408, ''Payment of retired or retainer pay in compliance with court orders.'' The former spouse may apply to the DFAS for direct payment of these monies by using DD Form 2293.

Affected Public: Individuals and households.

Annual Burden Hours: 6741.

Number of Respondents: 26,963.

Responses per Respondent: 1.

Annual Responses: 26,963.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The respondents of this information collection are spouses or former spouses of military members. The applicant submits a DD Form 2293 to the DFAS. The information from the DD Form 2293 is used by DFAS in processing the applicant's request as authorized under 10 U.S.C. 1408. The DD Form 2293 was devised to standardize applications for payment under the Act. Information on the form is also used to determine the applicant's current status and contains statutory required certifications the applicant/former spouse must make when applying for payments.

Dated: January 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00694 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0072]

Submission for OMB Review; Comment Request

AGENCY: United States Military Entrance Processing Command (USMEPCOM), Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMEPCOM MEPS Customer Satisfaction Survey, OMB Control Number 0704–0470.

Type of Request: Extension.

Number of Respondents: 75,000.

Responses per Respondent: 1.

Annual Responses: 75,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 12,500.

Needs and Uses: The information collection requirement is necessary to aid the MEPS in evaluating effectiveness of current policies and core processes,

identifying unmet customer needs, and allocating resources more efficiently.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

USMEPCOM, with headquarters in North Chicago, Ill., is a joint service command staffed with civilians and military from all five branches of service. The command, through its network of 65 Military Entrance Processing Stations, determines whether applicants are qualified for enlistment based on standards set by each of the services. USMEPCOM Regulation 601–23, Enlistment Processing, directs the information collection requirement for all 65 Military Entrance Processing Stations (MEPS) to obtain timely feedback on MEPS core processes. This web-based tool will allow MEPS to efficiently administer voluntary surveys on a routine basis to their primary customer, the applicants, for military service. This information collection requirement is necessary to aid the MEPS in evaluating effectiveness of current policies and core processes, identifying unmet customer needs, and allocating resources more efficiently.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00698 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0118]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Verification of Birth; DD Form 372; OMB Control Number 0704–0006.

Type of Request: Extension.

Number of Respondents: 140,000.

Responses per Respondent: 1.

Annual Responses: 140,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 7,000.

Needs and Uses: Title 10, U.S.C. 505, 532, 3253, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local, or Tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00704 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0009]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel & Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 17, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Personnel and Readiness, Defense Human Resource Activity, ATTN: Robert Eves, 4800 Mark Center Drive, Alexandria, VA 22350–4000, or submit an email to *dhracacpolicy@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Identification Card/DEERS Enrollment; DD Form 1172–2; OMB Control Number 0704–0415.

Needs and Uses: The information collected is used to determine an individual's eligibility for benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

Affected Public: Individuals or Households.

Annual Burden Hours: 135,000.

Number of Respondents: 2,700,000.

Responses per Respondent: 1.

Annual Responses: 2,700,000.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Dated: January 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00677 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0100]

Submission for OMB Review; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DLA Climate Culture Survey; OMB Control Number 0704–0575.

Type of Request: Revision.

Number of Respondents: 860.

Responses per Respondent: 1.

Annual Responses: 860.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 645.

Needs and Uses: The information collection requirement is necessary to obtain and record the perceptions of DLA employees regarding the organizational culture and climate. The DLA Culture/Climate Survey standardizes how organizational culture/climate is measured across the DLA enterprise, focuses leadership attention on culture/climate, and drives actions to improve the overall culture/climate and DLA organizational performance.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00707 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2020–HQ–0001]

Proposed Collection; Comment Request

AGENCY: The Office of the Secretary of the Navy, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Naval Sea Systems Command and Naval Sea Systems Command Field Activity announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 17, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, Ms. Barbara Figueroa or call 703–614–7885.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Naval Sea Systems Command and Field Activity Visitor Access Request; NAVSEA 5500/1 NAVSEA Visitor Sign In/Out Sheet; OMB Control Number 0703–0055.

Needs and Uses: The information collection requirement is necessary for Naval Sea Systems Command and Naval Sea Systems Command Field Activity's at Washington Navy Yard, Washington DC to verify that visitors who have appropriate credentials, clearance level, and need-to-know are granted access to NAVSEA spaces, if they have clearance for classified information, and allows NAVSEA Security to keep record of visitors to NAVSEA spaces. Respondents are Navy support contractors, individuals from other agencies visiting the Command and Field Activities, various members of the public.

Affected Public: Individuals or households.

Annual Burden Hours: 1,300.

Number of Respondents: 5,200.

Responses per Respondent: 1.

Annual Responses: 5,200.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: January 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00708 Filed 1–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0141]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program Repayment Plan Selection Form

AGENCY: Federal Student Aid (FSA), 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 February 18, 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–2019–ICCD–0141. 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 Beth Grebeldinger, 202–377–4018.

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: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.

OMB Control Number: 1845–0014.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 660,000.

Total Estimated Number of Annual Burden Hours: 110,220.

Abstract: The Repayment Plan Request form serves as the means by which Direct Loan borrowers notify the Department of their choice of an initial repayment plan under the Standard, Extended or Graduated options before their loans enter repayment. The form may also be used by borrowers to request a change in the Standard, Extended or Graduated repayment plans options after their loans have entered repayment. If a borrower does not select an initial repayment plan, the borrower is placed on the Standard Repayment Plan in accordance with 34 CFR 685.210(a)(2).

Dated: January 14, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–00745 Filed 1–16–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9048–9]

Environmental Impact Statements; Notice of Availability

Weekly receipt of Environmental Impact Statements
Filed January 6, 2020 10 a.m. EST,
Through January 13, 2020 10 a.m. EST
Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200006, Final Supplement, Caltrans, CA, State Route 241/91 Tolled Express Lane Connector Project, Review Period Ends: 02/18/2020, Contact: Smita Deshpande 657–328–6151

EIS No. 20200007, Final, USACE, MS, Bayou Casotte Harbor Channel Improvement Project, Review Period Ends: 02/18/2020, Contact: Jennifer Jacobson 251–690–2724

EIS No. 20200008, Draft, USFS, NM, Gila National Forest Draft Revised Forest Plan, Comment Period Ends: 04/16/2020, Contact: Jenny Natharius 575–388–8483

Dated: January 13, 2020.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2020–00720 Filed 1–16–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 17–310; DA 19–1253; FRS 16373]

Wireline Competition Bureau Provides Guidance on the Implementation Schedule for Reforms Adopted by the Rural Health Care Program Promoting Telehealth Report and Order

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (the Commission or FCC) announces the intended schedule for the newly adopted reforms in the Rural Health Care Promoting Telehealth Report and Order.

FOR FURTHER INFORMATION CONTACT: William Layton, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–0868 or via email at *William.Layton@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WC Docket No. 17–310; DA 19–1253, released December 10, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/DA-19-1253A1.pdf.*

On August 20, 2019, the Commission released a Report and Order reforming the rules for the Rural Health Care (RHC) Program to promote transparency and predictability, and further the efficient allocation of limited program resources. The Commission stated the adopted reforms would generally become effective, unless otherwise indicated, 30 days after publication of both the Rural Health Care Promoting Telehealth Report and Order (*Order*), FCC 19–78 and the **Federal Register** final rule summary (84 FR 54952, October 11, 2019; effective November 12, 2019). The Commission separately indicated when particular reforms would apply in funding year 2020 versus funding year 2021, and provided an implementation schedule summary ''to ease the burden on program applicants.'' The Commission noted, however, that, to the extent reforms require review pursuant to the Paperwork Reduction Act (PRA) of 1995, such reforms would take effect immediately upon announcement in the **Federal Register** of Office of Management and Budget (OMB) approval.

To provide further guidance to RHC Program participants, the following is the intended implementation schedule for the newly adopted reforms:

Funding Year 2020 Competitive Bidding (January 1, 2020)

- Similar services evaluated based on advertised speeds 30% above or below the speed of the requested service, *Order* at paras. 15–16; and
- Revised and harmonized competitive bidding certifications, *Order* at paras. 156, 157, 172, 200; 47 CFR 54.622(e)(1)(i) through (ix).

Opening of Funding Year 2020 Application Window (February 1, 2020)

- Elimination of limitation on support for satellite services, *Order* at paras. 92–97;
- All Healthcare Connect Fund consortia must comply with majority-rural requirement, *Order* at paras. 147–49;
- Prohibition on directly or indirectly soliciting or accepting gifts, *Order* at paras. 166–69; 47 CFR 54.622(h)(1) through (4);
- Extension of Healthcare Connect Fund Program competitive bidding exemptions to the Telecommunications Program, *Order* at paras. 163–65; 47 CFR 54.622(i)(1) through (5); and
- Revised and harmonized funding request certifications, *Order* at paras. 156, 168, 170, 172, 200; 47 CFR 54.623(a)(1)(i) through (x).

Start of Funding Year 2020 (July 1, 2020)

- Annual inflation adjustment of $150 million cap on multi-year commitments and upfront payments, *Order* at paras. 138–140; 47 CFR 54.619(a)(1) through (2);
- Prioritization of funding if demand exceeds the annual funding cap, *Order* at paras. 107–143; 47 CFR 54.621(b);
- Program-wide service delivery deadline, *Order* at paras. 180–82; 47 CFR 54.626(a);
- Program-wide invoice deadline, *Order* at paras. 188–89; 47 CFR 54.627(a); and
- Revised and harmonized invoice certifications for applicants and service providers, *Order* at paras. 168, 170, 172, 192–93, 200; 47 CFR 54.627(c)(3), (d).

FY 2021 Competitive Bidding (July 1, 2020)

- Competitive bidding begins on July 1 prior to the start of the applicable funding year, *Order* at paras. 173–75;
- Reformed method of determining urban and rural rates by the Administrator, including publishing median urban and rural rates for eligible services in a publicly available database, *Order* at paras. 21–67, 76–91; 47 CFR 54.604(a) through (b), 54.605(a) through (b);
- New standard of review for seeking a waiver of median rural rate determined by the Administrator, *Order* at paras. 68–75; 47 CFR 54.605(c);
- Establish expanded consultant registration process, *Order* at paras. 170–71;
- Applicants must list the services for which they are seeking bids rather than what they need services to do*, *Order* at paras. 154–55; 47 CFR 54.622(d);
- Applicants must specify minimum requirements for weighted bid evaluation criteria, including whether they require service level guarantees*, *Order* at para. 158; 47 CFR 54.622(d);
- Applicants must specify any disqualification factors that may be used

to remove bids from consideration*, *Order* at para. 158; 47 CFR 54.622(d));

• Applicants must provide details of aggregate purchase arrangements with other entities*, *Order* at para. 157; 47 CFR 54.622(e)(2)); and

• Applicants must submit declaration of third-party assistance with competitive bidding form*, *Order* at paras. 158, 170; 47 CFR 54.622(e)(4)).

The *Order* anticipated that the five foregoing reforms marked with an asterisk (*) would be implemented in funding year 2020. More time is required to obtain PRA approval of the rule changes from OMB, however. These reforms will, therefore, go into effect for funding year 2021.

Opening of Funding Year 2021 Application Window

• Requirement that USAC open an initial application filing window with an end date no later than 90 days prior to the start of the funding year, *Order* at paras. 176–79; 47 CFR 54.621(a);

• Elimination of distance-based support in the Telecommunications Program, *Order* at paras. 98–101; and

• Revised and harmonized program-wide documentation requirements for competitive bidding and funding requests, *Order* at paras. 156, 158, 172, 200; 47 CFR 54.622(e)(3) through (5), 54.623(a)(3).

Start of Funding Year 2021 (July 1, 2021)

• Requirement that all Healthcare Connect Fund applicants submit an annual report, 47 CFR 54.618(b).

• Service providers must submit declarations of third-party assistance with invoices*, *Order* at para. 170;

• Program-wide requirements for site and service substitutions and Service Provider Identification Number (SPIN) changes*, *Order* at paras. 194–99; 47 CFR 54.624, 54.625;

• One-time 120-day extension of the program-wide invoice deadline*, *Order* at paras. 190–91; 47 CFR 54.627(b); and

• Ability to seek an extension of the program-wide service delivery deadline*, *Order* at paras. 183–87; 47 CFR 54.626(b).

The *Order* anticipated that the four foregoing reforms marked with an asterisk (*) would be implemented in funding year 2020. More time is required to obtain PRA approval of the rule changes from OMB, however. These reforms will, therefore, go into effect for funding year 2021.

Federal Communications Commission.

Ryan Palmer,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2020–00759 Filed 1–16–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 85 FR 1156.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, January 14, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: This meeting also discussed:

Matters relating to internal personnel decisions, or internal rules and practices.

* * * * *

CONTACT FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2020–00813 Filed 1–15–20; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011980–003.

Agreement Name: South Atlantic Chassis Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; Consolidated Chassis Management LLC, Georgia Ports Authority; South Carolina State Ports Authority; Maersk Line A/S; Hamburg-Sud; CMA CGM S.A.; APL Co. Pte. Ltd.; American President Lines, Ltd.; COSCO Shipping Lines Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Evergreen Line Joint Service Agreement; Hyundai Merchant Marine Co., Ltd.; Orient Overseas Container Line Limited; Ocean Network Express Pte., Ltd.; MSC Mediterranean Shipping Company, S.A.; Zim Integrated Shipping Services Ltd.; and Crowley Maritime Corporation.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The amendment adds Jacksonville Port Authority and North Carolina State Ports Authority as parties to the Agreement, and revises voting procedures with respect to membership in the Agreement.

Proposed Effective Date: 2/24/2020.

Location: http://fmcinet/Fmc.Agreements.Web/Public/AgreementHistory/464.

Dated: January 14, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–00719 Filed 1–16–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation RR (FR RR; OMB No. 7100–0372).[1]

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the

[1] The internal Agency Tracking Number previously assigned by the Board to this information collection was ''Reg RR.'' The Board is changing the internal Agency Tracking Number to ''FR RR'' for the purpose of consistency.

Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping and Disclosure Requirements Associated with Regulation RR.

Agency form number: FR RR.

OMB control number: 7100–0372.

Frequency: Event generated; annual.

Respondents: Securitizers that are, or are a subsidiary of, a state member bank, bank holding company, savings and loan holding company, intermediate holding company, Edge or agreement corporation, foreign banking organization, or nonbank financial company supervised by the Board.

Estimated number of respondents: 10.

Estimated average hours per response:

Sections 244.4 and 246.4—standard risk retention: Horizontal interests: Recordkeeping—0.5 hours, disclosures—5.5 hours; vertical interests: Recordkeeping—0.5 hours, disclosures—2.0 hours; combined horizontal and vertical interests: Recordkeeping—0.5 hours, disclosures—7.5 hours;

Sections 244.5 and 246.5—revolving master trusts: Recordkeeping—0.5 hours, disclosures—7.0 hours;

Sections 244.6 and 246.6—eligible asset-backed commercial paper (ABCP) conduits: Recordkeeping—20.0 hours, disclosures—3.0 hours;

Sections 244.7 and 246.7—commercial mortgage-backed securities: Recordkeeping—30.0 hours, disclosures—20.75 hours;

Sections 244.8 and 246.8—FNMA and FHLMC asset-backed securities (ABS): Disclosures—1.5 hours;

Sections 244.9 and 246.9—open market collateralized loan obligations (CLOs): Disclosures—20.25 hours;

Sections 244.10 and 246.10—qualified tender option bonds: Disclosures—6.0 hours;

Sections 244.11 and 246.11—allocation of risk retention to an originator: Recordkeeping—20.0 hours, disclosures—2.5 hours;

Sections 244.13, 244.19(g), 246.13, and 246.19(g)—exemption for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans: Recordkeeping—40.0 hours, disclosures—1.25 hours;

Sections 244.15 and 246.15—exemption for qualifying commercial loans, commercial real estate loans, and automobile loans: Recordkeeping—0.5 hours, disclosures—20.0 hours;

Sections 244.16 and 246.16—underwriting standards for qualifying commercial loans: Recordkeeping—40.5 hours, disclosures—1.25 hours;

Sections 244.17 and 246.17—underwriting standards for qualifying commercial real estate (CRE) loans: Recordkeeping—40.5 hours, disclosures—1.25 hours; and

Sections 244.18 and 246.18—underwriting standards for qualifying automobile loans: Recordkeeping—40.5 hours, disclosures—1.25 hours.

Estimated annual burden hours: 2,114.

General description of report: The recordkeeping and disclosure requirements in the credit risk retention rule are set forth below. Compliance with the information collections is mandatory.

Standard Risk Retention. Section 244.4 of Regulation RR and section 246.4 of the Securities and Exchange Commission's (SEC's) credit risk retention rule set forth the conditions that must be met by sponsors of a securitization that elects to use the credit risk retention rule's standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, as defined by the rule, or any combination thereof. Sections 244.4(c) of Regulation RR and section 246.4(c) of the SEC's credit risk retention rule set forth the disclosure requirements for a sponsor that uses the standard risk retention option.

A reasonable period of time prior to the sale of an ABS issued in the same offering of ABS interests, a sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account), is required to disclose to potential investors: The fair value (or a range of fair values and the method used to determine such range) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction; the material terms of the eligible horizontal residual interest; the methodology used to calculate the fair value (or range of fair values) of all classes of ABS interests; the key inputs and assumptions used in measuring the estimated total fair value (or range of fair values) of all classes of ABS interests, including, to the extent applicable, certain enumerated items; and a description of the reference data set or other historical information used to develop the key inputs and assumptions. A reasonable time after the closing of the securitization transaction, the sponsor must disclose: The fair value of the eligible horizontal residual interest retained by the sponsor; the fair value of the eligible horizontal residual interest required to be retained by the sponsor; and a description of any material differences between the methodology used in calculating the fair value disclosed prior to sale and the methodology used to calculate the fair value at the time of closing. If the sponsor retains risk through the funding of an eligible horizontal cash reserve account, the sponsor must also disclose the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such account.

For eligible vertical interests, a reasonable period of time prior to the sale of an ABS issued in the same offering of ABS interests, the sponsor is required to disclose to potential investors: The form of the eligible vertical interest; the percentage that the sponsor is required to retain; and a description of the material terms of the vertical interest and the amount the sponsor expects to retain at closing. A reasonable time after the closing of the securitization transaction, the sponsor must disclose the amount of vertical interest retained by the sponsor at closing, if that amount is materially different from the amount disclosed earlier.

Section 244.4(d) of Regulation RR and section 246.4(d) of the SEC's credit risk retention rule require a sponsor to retain the certifications and disclosures by section 244.4 of Regulation RR and section 246.4 of the SEC's credit risk retention rule. The sponsor must retain these records until three years after all ABS interests are no longer outstanding.

Revolving Pool Securitizations. Section 244.5 of Regulation RR and section 246.5 of the SEC's credit risk retention rule require sponsors relying on the revolving pool securitization risk retention option to disclose in writing to potential investors, a reasonable period of time prior to the sale of an ABS, the material terms of the seller's interest and the percentage of the seller's

interest that the sponsor expects to retain at the closing of the transaction. A reasonable time after the closing of the transaction, the sponsor must disclose in writing: The amount of the seller's interest that the sponsor retained at closing, if materially different from the amount previously disclosed; the material terms of any horizontal risk retention offsetting the seller's interest under sections 244.5(g), 244.5(h), and 244.5(i) of Regulation RR or sections 246.5(g), 246.5(h), or 246.5(i) of the SEC's credit risk retention rule, as applicable; and the fair value of any horizontal risk retention retained by the sponsor. Additionally, a sponsor must retain these disclosures in its records until three years after all are ABS interests are no longer outstanding.

Eligible ABCP Conduits. Section 244.6 of Regulation RR and section 246.6 of the SEC's credit risk retention rule address the requirements for sponsors utilizing the eligible ABCP conduit risk retention option. The sponsor must disclose to each purchaser of ABCP, before or at the time of the first sale of ABCP to such purchaser and at least monthly thereafter to each holder of commercial paper issued by the ABCP conduit: The name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying securitized assets, the standard industrial category code for each originator-seller that retains an interest in the securitization transaction, and a description of the percentage amount and form of interest retained by each originator-seller.

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each relevant originator-seller. If the ABCP conduit sponsor determines that an originator-seller is no longer in compliance, the sponsor must promptly notify the holders of the ABCP in writing of the name and form of organization of any originator-seller that fails to properly retain risk; the amount of ABS interests issued by an intermediate special purpose vehicle (SPV) of such originator-seller and held by the ABCP conduit; the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV; the risk retention in violation of the rule; the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit; and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests.

Commercial Mortgage-Backed Securities. Section 244.7 of Regulation RR and section 246.7 of the SEC's credit risk retention rule set forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option and requires a sponsor to make, a reasonable period of time prior to the sale of the ABS as part of the securitization transaction, the following disclosures to potential investors: The name and form of organization of each initial third-party purchaser; each initial third-party purchaser's experience in investing in commercial mortgage-backed securities; other material information regarding each initial third-party purchaser or each initial third-party purchaser's retention of the interest; the fair value and purchase price of the eligible horizontal residual interest retained by each third-party purchaser; the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option; a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to section 244.4; the material terms of the applicable transaction documents with respect to the Operating Advisor; and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine that such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties. A sponsor relying on the commercial mortgage-backed securities risk retention option is also required to include in the underlying securitization transaction documents certain provisions related to the appointment of an operating advisor, to maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements, and to notify the holders of the ABS interests in the event of noncompliance by a third-party purchaser with such regulatory requirements.

Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS. Section 244.8(c) of Regulation RR and section 246.8(c) of the SEC's credit risk retention rule require that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation risk retention option disclose to investors a description of the manner in which it has met the credit risk retention requirements.

Open Market CLOs. Section 244.9 of Regulation RR and section 246.9 of the SEC's credit risk retention rule set forth the requirements for sponsors relying on the open market CLO risk retention option. A reasonable period of time prior to the sale of ABS in the securitization transaction, a sponsor must disclose to potential investors a complete list of, and certain information related to, every asset held by an open market CLO and the full legal name and form of organization of the CLO manager.

Qualified Tender Option Bonds. Section 244.10 of Regulation RR and section 246.10 of the SEC's credit risk retention rule set forth the requirements for sponsors relying on the qualified tender option bond risk retention option and requires, a reasonable period of time prior to the sale of the ABS as part of the securitization transaction, the following disclosures to potential investors: The name and form of organization of the qualified tender option bond entity; a description of the form and subordination features of the retained interest in accordance with the disclosure obligations associated with the standard risk retention option; the fair value of any portion of the retained interest that is claimed by the sponsor as an eligible horizontal residual interest; and the percentage of ABS interests issued that is represented by any portion of the retained interest that is claimed by the sponsor as an eligible vertical interest. In addition, to the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the sponsor must disclose the name and form of organization of the qualified tender option bond entity; the identity of the issuer of the municipal securities; the face value of the municipal securities deposited into the qualified tender option bond entity; and the face value of the municipal securities retained outside of the qualified tender option bond entity by the sponsor or its majority-owned affiliates.

Allocation of Risk Retention to an Originator. Section 244.11 of Regulation RR and section 246.11 of the SEC's credit risk retention rule set forth the

conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk the sponsor is required to retain. The sponsor must provide the same disclosures required by section 244.4(c) of Regulation RR or section 246.6(c) of the SEC's credit risk retention rule, as applicable, and must also, a reasonable period of time prior to the sale of the ABS as part of the securitization transaction, disclose the following to potential investors: The name and form of organization of any originator that acquired and retained (or will acquire and retain) an interest in the transaction; a description of the form, amount, and nature of such interest; and the method of payment for such interest. A sponsor relying on this section is also required to maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with the retention amount, as well as hedging, transferring, and pledging requirements, and to promptly notify the holders of the ABS interests issued in the transaction in the event of originator non-compliance with such requirements.

Exemption for Qualified Residential Mortgages and Exemptions for Securitizations of Certain Three-to-Four Unit Mortgage Loans. Sections 244.13 and 244.19(g) of Regulation RR and sections 246.13 and 246.19(g) of the SEC's credit risk retention rule provide exemptions from the risk retention requirements for qualified residential mortgages and qualifying three-to-four unit residential mortgage loans that meet certain criteria, including that the depositor with respect to the securitization transaction certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective, and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities in the issuing entity. In addition, sections 244.13(c)(3) and 244.19(g)(3) of Regulation RR and sections 246.13(c)(3) and 246.19(g)(3) of the SEC's credit risk retention rule provide that a sponsor that has relied upon the exemptions will not lose the exemptions if, after closing of the transaction, it is determined that one or more of the residential mortgage loans does not meet all of the criteria, provided that the depositor complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan that is required to be repurchased by the sponsor, the amount of such repurchased loan, and the cause for such repurchase.

Qualifying Commercial Loans, CRE Loans, and Automobile Loans. Section 244.15 of Regulation RR and section 246.15 of the SEC's credit risk retention rule provide exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in section 244.16 of Regulation RR or section 246.16 of the SEC's credit risk retention rule, qualifying CRE loans that meet the criteria specified in section 244.17 of Regulation RR or section 246.17 of the SEC's credit risk retention rule, and qualifying automobile loans that meet the criteria specified in section 244.18 of Regulation RR or section 246.18 of the SEC's credit risk retention rule. A sponsor must disclose to potential investors, a reasonable period of time prior to the sale of asset-backed securities of the issuing entity: A description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention. In addition, the sponsor is required to disclose descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (qualifying assets), and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral. Additionally, a sponsor must retain the above disclosures in its records until three years after all ABS interests are no longer outstanding.

Underwriting Standards for Qualifying Commercial Loans, Underwriting Standards for Qualifying CRE Loans, and Underwriting Standards for Qualifying Automobile Loans. Sections 244.16, 244.17, and 244.18 of Regulation RR and sections 246.16, 246.17, and 246.18 of the SEC's credit risk retention rule each require that the depositor of an asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective. The sponsor is required to provide a copy of the certification to potential investors prior to the sale of asset-backed securities in the issuing entity, and the sponsor must promptly notify the holders of the asset-backed securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan and the cause for such cure or repurchase. Additionally, a sponsor must retain the disclosures required in sections 244.16(a)(8), 244.17(a)(10), and 244.18(a)(8) of Regulation RR or sections 246.16(a)(8), 246.17(a)(10), and 246.18(a)(8) of the SEC's credit risk retention rule, as applicable, in its records until three years after all ABS interests are no longer outstanding.

Legal authorization and confidentiality: The FR RR is authorized pursuant to section 15G of the Securities Exchange Act, which authorizes the Board, jointly with the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and SEC, to prescribe risk retention regulations (15 U.S.C. 78o–11). The FR RR is mandatory.

The FR RR contains recordkeeping and disclosure requirements that are not submitted to the Board, so the issue of confidentiality will not normally arise. If the Board's examiners retain a copy of the records as part of an examination, the records may be exempt from disclosure under exemption 8 of the Freedom of Information Act, which exempts from disclosure matters that are ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions'' (5 U.S.C. 552(b)(8)).

Current actions: On September 30, 2019, the Board published a notice in the **Federal Register** (84 FR 51569) requesting public comment for 60 days on the extension, without revision, of the FR RR. The comment period for this notice expired on November 29, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, January 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–00746 Filed 1–16–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the

notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 3, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The DMB Corporation, Inc. Employee Stock Ownership Plan, DeForest, Wisconsin, Bradley Schroeder, DeForest, Wisconsin; Rhonda Gilbertson, Pardeeville, Wisconsin; and Rachel Larson, Columbus, Wisconsin, as co-trustees;* and as members of a group acting in concert with State Bank of Cross Plains, Cross Plains, Wisconsin, as custodian for the Heather L. Schroeder Individual Retirement Account; Bradley Schroeder and Heather Schroeder, both of DeForest, Wisconsin; Kevin Gilbertson and Rhonda Gilbertson, both of Pardeeville, Wisconsin; and Aaron Larson and Rachel Larson, both of Columbus, Wisconsin, to retain voting shares of DMB Corporation, Inc., and thereby indirectly retain voting shares of DMB Community Bank, both of DeForest, Wisconsin.

Board of Governors of the Federal Reserve System, January 14, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–00750 Filed 1–16–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314).

DATES: Comments must be submitted on or before March 17, 2020.

ADDRESSES: You may submit comments, identified by FR 4201, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, 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 information collection 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.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, With Revision, the Following Information Collection:

Report title: Market Risk Capital Rule.

Agency form number: FR 4201.

OMB control number: 7100–0314.

Frequency: Annually, quarterly, and on occasion.

Respondents: Bank holding companies, savings and loan holding companies, intermediate holding companies, and state member banks.

Estimated number of respondents: 37.

Estimated average hours per response: Reporting, 1,088; Recordkeeping, 508; Disclosure, 28.

Estimated annual burden hours: Reporting, 1,088; Recordkeeping, 31,744; Disclosure, 2,812.

General description of report: The market risk capital rule, which requires banking organizations to hold capital to cover their exposure to market risk, is an important component of the Board's regulatory capital framework (12 CFR part 217; Regulation Q). The respondents for this collection of information are bank holding companies (BHCs), savings and loan holding companies (SLHCs), intermediate holding companies (IHCs), and state member banks (SMBs) that meet certain thresholds. The market risk capital rule applies to any banking organization with aggregate trading assets and trading liabilities equal to (1) 10 percent or more of quarter-end total assets or (2) $1 billion or more.[1] The Board may exclude a banking organization that meets these thresholds if the Board determines that the exclusion is appropriate based on the level of market risk of the banking organization and is consistent with safe and sound banking practices.[2]

The Board may further apply the market risk capital rule to any other banking organization if the Board deems it necessary or appropriate because of the level of market risk of the banking organization or to ensure safe and sound banking practices.[3] The collections of information provide current statistical data identifying market risk areas on which to focus onsite and offsite examinations. They also allow the Board to assess the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk capital rule. These collections of information ensure capital adequacy of banking organizations according to their level of market risk and assist the Board in implementing and validating the market risk framework. There are no required reporting forms associated with this information collection.

There are several recordkeeping requirements outlined in the market risk capital rule. Subject banking organizations must adequately document all material aspects of their internal models; the management and valuation of their covered positions; their control, oversight, validation, and review processes and results; and their internal assessments of capital adequacy. Subject banking organizations are also required to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and which trading positions are correlation trading positions. Furthermore, subject banking organizations are required to have clearly defined trading and hedging strategies for trading positions.

In addition, subject banking organizations must conduct and document an analysis of the risk characteristics of each securitization position prior to acquiring the position, considering structural features of the securitization that would materially impact the performance of the position; relevant information regarding the performance of underlying credit exposure(s); relevant market data of the securitization; and, for resecuritization positions, performance information on the underlying securitization exposure. On an ongoing basis (but no less frequently than quarterly), subject banking organizations must evaluate, review, and update as appropriate the analysis required for each securitization position.

Proposed revisions: In August 2019, the Board extended the FR 4201 for three years, with revision, and a notice was published in the **Federal Register** (84 FR 39843). Those revisions included removing references to provisions in the market risk capital rule concerning securitizations. This revision was in error, as the market risk capital rule contains a recordkeeping requirement concerning securitizations, which is described above. Therefore, the Board proposes to reinstate this recordkeeping requirement. Additionally, the Board proposes to revise the FR 4201 to account for the general recordkeeping requirement in section 217.203(f) of the market risk capital rule, which was not previously accounted for.

Legal authorization and confidentiality: The FR 4201 is authorized pursuant to sections 9(6) and 11 of the Federal Reserve Act for SMBs (12 U.S.C. 324 and 248); pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844(c)) and, in some cases, section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for BHCs (12 U.S.C. 5365); pursuant to section 5 of the BHC Act (12 U.S.C. 1844), in conjunction with section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and section 165 of the Dodd-Frank Act for IHCs of foreign banking organizations; and pursuant to sections 10(b)(2) and (g) of the Home Owners' Loan Act for SLCHs (12 U.S.C. 1467a(b)(2) and (g)). The FR 4201 is mandatory.

The information collected pursuant to the FR 4201 is collected as part of the Board's supervisory process, and therefore may be afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 552(b)(4)). Determinations of confidentiality based on exemption 4 of the FOIA would be made on a case-by-case basis.

Board of Governors of the Federal Reserve System, January 13, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–00662 Filed 1–16–20; 8:45 am]

BILLING CODE 6210–01–P

[1] *See* 12 CFR 217.201(b)(1).

[2] *See* 12 CFR 217.201(b)(3).

[3] *See* 12 CFR 217.201(b)(2).

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2020–01; Docket No. 2020–0002; Sequence No. 1]

Office of Federal High-Performance Buildings; Green Building Advisory Committee; Request for Membership Nominations for an Environmental Health Expert and a Construction Expert

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice of request for membership nominations for an Environmental Health Expert and a Construction Expert.

SUMMARY: The Green Building Advisory Committee provides advice to GSA as a mandatory federal advisory committee, as specified in the Energy Independence and Security Act of 2007 (EISA) and in accordance with the provisions of the Federal Advisory Committee Act (FACA). With openings for an Environmental Health expert and a Construction expert, this notice invites qualified candidates to apply to be considered for appointment to a voluntary position on the Committee representing these areas of expertise.

DATES: *Applicable:* January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Office of Federal High-Performance Buildings, GSA, at 202–

219–1121 or email at *ken.sandler@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Administrator of the GSA established the Green Building Advisory Committee (hereafter, ''the Committee'') on June 20, 2011 (76 FR 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17123, or EISA), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2). Under this authority, the Committee advises GSA on how the Office of Federal High-Performance Buildings can most effectively accomplish its mission. Information about this Office is available online at *http://www.gsa.gov/hpb.* Information about the Committee, including current members, is available on GSA's website at *http://www.gsa.gov/gbac.*

The EISA statute authorizes the Committee and identifies categories of members to be included. The categories that are the subject of this notice are defined at EISA § 494(b)(1)(B) as:

- ''environmental health experts, including those with experience in children's health.''
- ''building experts, including . . . construction contractors.''

Member responsibilities: Approved Committee members will be appointed to terms of either 2 or 4 years with the possibility of membership renewals as appropriate. Membership is limited to the specific individuals appointed and is non-transferrable. Members are expected to attend all meetings in person, review all Committee materials, and actively provide their advice and input on topics covered by the Committee. Committee members will not receive compensation or travel reimbursements from the Government except where need has been demonstrated and funds are available.

Request for membership nominations: This notice provides an opportunity for individuals to present their qualifications and apply for an open seat on the Committee. GSA will review and consider all applications and determine which candidates are likely to add the most value to the Committee based on the criteria outlined in this notice.

No person who is a federally-registered lobbyist may serve on the Committee, in accordance with the Presidential Memorandum ''Lobbyists on Agency Boards and Commissions'' (June 18, 2010).

Nomination process for Advisory Committee appointment: Individuals may nominate themselves or others. Requirements include:

- At least 5 years of high-performance building experience, which may include a combination of project-based, research and policy experience.
- Academic degrees, certifications and/or training demonstrating high-performance building and related sustainability and real estate expertise.
- Knowledge of federal sustainability and energy laws and programs.
- Proven ability to work effectively in a collaborative, multi-disciplinary environment and add value to the work of a committee.
- Qualifications appropriate to the specific statutory requirement of an Environmental Health Expert or a Construction Expert, with expertise applicable to public/commercial building design & operation.

A nomination package shall include the following information for each nominee: (1) A letter of nomination stating the name and organizational affiliation(s) of the nominee, nominee's field(s) of expertise, specific qualifications as an Environmental Health Expert or a Construction Expert to the Committee, and description of interest and qualifications; (2) A professional resume or CV; and (3) Complete contact information including name, return address, email address, and daytime telephone number of the nominee and nominator.

GSA reserves the right to choose Committee members based on qualifications, experience, Committee balance, statutory requirements and all other factors deemed critical to the success of the Committee. Candidates may be asked to provide detailed financial information to permit evaluation of potential conflicts of interest that could impede their work on the Committee, in accordance with the requirements of FACA. All nominations must be submitted in sufficient time to be received by 5:00 p.m., Eastern Daylight Time (EDT), on Thursday, February 13, 2020, and be addressed to *ken.sandler@gsa.gov.*

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Buildings, Office of Government-wide Policy.

[FR Doc. 2020–00676 Filed 1–16–20; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response, (BSC, CPR); Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, Center for Preparedness and Response, (BSC, CPR); January 23, 2020, 12:30 p.m. to 5:00 p.m., EST and January 24, 2020, 8:30 a.m. to 2:30 p.m., EST. Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027, which was published in the **Federal Register** on December 6, 2019, Volume 84, Number 235, page 66906.

The meeting is being amended to a one-day meeting on January 24, 2020, 8:40 a.m. to 4:00 p.m., EST. The agenda will include: Updates from the CPR Director and CPR Division Directors, Report from the Biological Agent Containment Working Group (BACWG), and Progress Update on the Graduated Response Framework. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Office of Science and Public Health Practice, CDC, 1600 Clifton Road NE, Mailstop H21–6, Atlanta, Georgia 30329–4027; Telephone: (404) 639–7450; Fax: (404) 471–8772; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–00749 Filed 1–16–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: ACF Program Instruction—Children's Justice Act (OMB #0970–0425)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the Children's Justice Act Program Instruction (OMB #0970–0425, expiration 4/30/2020). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Program Instruction, prepared in response to the enactment of the Children's Justice Act (CJA), Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Reauthorization of 2010, provides direction to the states and territories to accomplish the purposes of assisting states in developing, establishing, and operating programs designed to improve: (1) The assessment and investigation of suspected child abuse and neglect cases, including cases of suspected child sexual abuse and exploitation, in a manner that limits additional trauma to the child and the child's family; (2) the assessment and investigation of cases of suspected child abuse-related fatalities and suspected child neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, including child sexual abuse and exploitation; and (4) the assessment and investigation of cases involving children with disabilities or serious health-related problems who are suspected victims of child abuse or neglect. This Program Instruction contains information collection requirements that are found in Public Law 111–320 at sections 107(b) and 107(d), and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate, and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Application and Annual Report	52	1	60	3,120

Estimated Total Annual Burden Hours: 3,120.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 5106c Sec. 107(b)(4) and 42 U.S.C. 5106 Sec. 107(B)(5).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–00739 Filed 1–16–20; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–2495]

Request for Nominations for Voting Members on a Public Advisory Committee; Technical Electronic Product Radiation Safety Standards Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) in the Center for Devices and Radiological Health. Nominations will be accepted for current and upcoming vacancies effective with this notice.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before March 17, 2020, will be given first consideration for membership on TEPRSSC. Nominations received after March 17, 2020, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically by accessing FDA's Advisory Committee Membership Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Patricio G. Garcia, Division of Management Services, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–796–6875, email: *Patricio.Garcia@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on TEPRSSC that include three general public representatives.

I. General Description of the Committee's Duties

The committee provides advice and consultation to the Commissioner of Food and Drugs (Commissioner) on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards to the Commissioner for consideration.

II. Criteria for Voting Members

The committee consists of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of science or engineering, applicable to electronic product radiation safety. Members will be invited to serve for overlapping terms of up to 4 years. Terms of more than 2 years are contingent upon the renewal of the committee by appropriate action prior to its expiration.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 10, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00733 Filed 1–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0578]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) 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 18, 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 0910–0338. 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.

General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h

OMB Control Number 0910–0338—Extension

Under section 351 of the Public Health Services Act (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and approval before marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to ensure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations in part 601 (21 CFR part 601).

Section 130(a) of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a new provision (section 506B of the FD&C Act (21 U.S.C. 356b)) requiring reports of postmarketing studies for approved human drugs and licensed biological products. Section 506B of the FD&C Act provides FDA with additional authority to monitor the progress of postmarketing studies that applicants have made a commitment to conduct and requires the Agency to make publicly available information that pertains to the status of these studies. Under section 506B(a) of the FD&C Act, applicants that have committed to conduct a postmarketing study for an approved human drug or licensed biological product must submit to FDA a status report of the progress of the study or the reasons for the failure of the applicant to conduct the study. This report must be submitted within 1 year after the U.S. approval of the application and then annually until the study is completed or terminated.

A summary of the collection of information requirements follows:

Section 601.2(a) (21 CFR 601.2(a)) requires a manufacturer of a biological product to submit an application on forms prescribed for such purposes with accompanying data and information, including certain labeling information, to FDA for approval to market a product in interstate commerce. The container and package labeling requirements are provided under §§ 610.60 through 610.65 (21 CFR 610.60 through 610.65). The estimate for these regulations is

included in the estimate under § 601.2(a) in table 1.

Section 601.5(a) (21 CFR 601.5(a)) requires a manufacturer to submit to FDA notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) (21 CFR 601.6(a) requires the manufacturer to notify selling agents and distributors upon suspension of its license, and provide FDA of such notification.

Section 601.12(a)(2) (21 CFR 601.12((a)(2)) requires, generally, that the holder of an approved biologics license application (BLA) must assess the effects of a manufacturing change before distributing a biological product made with the change. Section 601.12(a)(4) requires, generally, that the applicant must promptly revise all promotional labeling and advertising to make it consistent with any labeling changes implemented. Section 601.12(a)(5) requires the applicant to include a list of all changes contained in the supplement or annual report; for supplements, this list must be provided in the cover letter. The burden estimates for § 601.12(a)(2) are included in the estimates for supplements (§§ 601.12(b) and (c)) and annual reports (§ 601.12(d)). The burden estimates for § 601.12(a)(4) are included in the estimates under 601.12(f)(4) in table 1.

Sections 601.12(b)(1) and (3), (c)(1), (3), and (5), and (d)(1) and (3) require applicants to follow specific procedures to submit information to FDA of any changes, in the product, production process, quality controls, equipment, facilities, or responsible personnel established in an approved license application. The appropriate procedure depends on the potential for the change to have a substantial, moderate, or minimal adverse effect on the identity, strength, quality, purity, or potency of the products as they may relate to the safety or effectiveness of the product. Under § 601.12(b)(4), an applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship of the applicant. The burden estimate for § 601.12(b)(4) is minimal and included in the estimate under § 601.12(b)(1) and (3) in table 1.

Section 601.12(e) requires applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval before distributing the product. Section 601.12(f)(1) through (3) requires applicants to follow specific procedures to report certain labeling changes to FDA. Section 601.12(f)(4) requires applicants to report to FDA advertising and promotional labeling and any changes.

Under § 601.14 (21 CFR 601.14), the content of labeling required in 21 CFR 201.100(d)(3) must be in electronic format and in a form that FDA can process, review, and archive. This requirement is in addition to the provisions of §§ 601.2(a) and 601.12(f). The burden estimate for § 601.14 is minimal and included in the estimate under §§ 601.2(a) (BLAs) and 601.12(f)(1) through (3) (labeling supplements and annual reports) in table 1.

Section 601.45 (21 CFR 601.45) requires applicants of biological products for serious or life-threatening illnesses to submit to the Agency for consideration, during the preapproval review period, copies of all promotional materials, including promotional labeling as well as advertisements.

In addition to §§ 601.2 and 601.12, there are other regulations in 21 CFR parts 640, 660, and 680 that relate to information to be submitted in a license application or supplement for certain blood or allergenic products as follows: §§ 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) and (d) (21 CFR 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) and (d)).

In table 1, the burden associated with the information collection requirements in the applicable regulations is included in the burden estimate for §§ 601.2 and/or 601.12. A regulation may be listed under more than one paragraph of § 601.12 due to the type of category under which a change to an approved application may be submitted.

There are also additional container and/or package labeling requirements for certain licensed biological products including: § 640.74(b)(3) and (4) for Source Plasma Liquid; § 640.84(a) and (c) (21 CFR 640.84(a) and (c)) for Albumin; § 640.94(a) (21 CFR 640.94(a)) for Plasma Protein Fraction; § 660.2(c) (21 CFR 660.2(c)) for Antibody to Hepatitis B Surface Antigen; § 660.28(a) through (c) (21 CFR 660.28(a) through (c)) for Blood Grouping Reagent; § 660.35(a) through (d) (21 CFR 660.35(a) through (d)) for Reagent Red Blood Cells; § 660.45 (21 CFR 660.45) for Hepatitis B Surface Antigen; and § 660.55(a) and (b) (21 CFR 660.55(a) and (b)) for Anti-Human Globulin. The burden associated with the additional labeling requirements for submission of a license application for these certain biological products is minimal because the majority of the burden is associated with the requirements under §§ 610.60 through 610.65 or § 809.10 (21 CFR 809.10). Therefore, the burden estimates for these regulations are included in the estimate under §§ 610.60 through 610.65 in table 1. The burden estimates associated with § 809.10 are approved under OMB control number 0910–0485.

Section 601.27(a) (21 CFR 601.27(a)) requires that applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information. Section 601.27(b) provides that an applicant may request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a) until after licensing the product for use in adults. Section 601.27(c) provides that an applicant may request a full or partial waiver of the requirements under § 601.27(a) with adequate justification. The burden estimates for § 601.27(a) are included in the burden estimate under § 601.2(a) in table 1 because these regulations deal with information to be provided in an application.

Section 601.28 (21 CFR 601.28) requires sponsors of licensed biological products to submit the information in § 601.28(a) through (c) to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drug Evaluation and Research (CDER) each year, within 60 days of the anniversary date of approval of the license. Section 601.28(a) requires sponsors to submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Section 601.28(b) requires sponsors to submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. Section 601.28(c) requires sponsors to submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, on or behalf of, the applicant. If the postmarketing studies were required or agreed to, the status of these studies is to be reported under § 601.70 (21 CFR 601.70) rather than under this section.

Sections 601.33 through 601.35 (21 CFR 601.33 through 601.35) clarify the information to be submitted in an application to FDA to evaluate the safety and effectiveness of radiopharmaceuticals intended for in vivo administration for diagnostic and monitoring use. The burden estimates for §§ 601.33 through 601.35 are included in the burden estimate under

§ 601.2(a) in table 1 because these regulations deal with information to be provided in an application.

Section 601.70(b) requires each applicant of a licensed biological product to submit annually a report to FDA on the status of postmarketing studies for each approved product application. Each annual postmarketing status report must be accompanied by a completed transmittal Form FDA 2252 (Form FDA 2252 approved under OMB control number 0910–0001). Under § 601.70(d), two copies of the annual report shall be submitted to FDA.

Sections 601.91 through 601.94 (21 CFR 601.91 through 601.94) concern biological products for which human efficacy studies are not ethical or feasible. Section 601.91(b)(2) requires, in certain circumstances, such postmarking restrictions as are needed to ensure the safe use of the biological product. Section 601.91(b)(3) requires applicants to prepare and provide labeling with relevant information to patients or potential patients for biological products approved under part 601, subpart H, when human efficacy studies are not ethical or feasible (or based on evidence of effectiveness from studies in animals). Section 601.93 provides that biological products approved under part 601, subpart H are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products. Section 601.94 requires applicants under part 601, subpart H to submit to the Agency for consideration during the preapproval review period copies of all promotional materials including promotional labeling as well as advertisements. Under §§ 601.91(b)(2) and 601.93, any potential postmarketing reports and/or recordkeeping burdens would be included under the adverse experience reporting (AER) requirements under 21 CFR part 600 (OMB control number 0910–0308). Therefore, any burdens associated with these requirements would be reported under the AER information collection requirements (OMB control number 0910–0308). The burden estimate for § 601.91(b)(3) is included in the estimate under §§ 610.60 through 610.65.

Section 610.9(a) (21 CFR 610.9(a)) requires the applicant to present certain information, in the form of a license application or supplement to the application, for a modification of any particular test method or manufacturing process or the conditions under which it is conducted under the biologics regulations. The burden estimate for § 610.9(a) is included in the estimate under §§ 601.2(a) and 601.12(b) and (c) in table 1.

Under § 610.15(d) (21 CFR 610.15(d)), the Director of CBER or the Director of CDER may approve, as appropriate, a manufacturer's request for exceptions or alternatives to the regulation for constituent materials. Manufacturers seeking approval of an exception or alternative must submit a request in writing with a brief statement describing the basis for the request and the supporting data.

Section 640.120 (21 CFR 640.120) requires licensed establishments to submit a request for an exception or alternative to any requirement in the biologics regulations regarding blood, blood components, or blood products. For licensed establishments, a request for an exception or alternative must be submitted in accordance with § 601.12; therefore, the burden estimate for § 640.120 is included in the estimate under § 601.12(b) in table 1.

Section 680.1(c) requires manufacturers to update annually their license file with the list of source materials and the suppliers of the materials. Section 680.1(b)(3)(iv) requires manufacturers to notify FDA when certain diseases are detected in source materials.

Sections 600.15(b) and 610.53(b) (21 CFR 600.15(b) and 610.53(b)) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 606.110(b) (21 CFR 606.110(b)) requires the submission of a request for approval to perform plasmapheresis of donors who do not meet certain donor requirements for the collection of plasma containing rare antibodies. Under §§ 600.15(b), 610.53(b), and 606.110(b), a request for an exemption or modification to the requirements would be submitted as a supplement. Therefore, the burden hours for any submissions under §§ 600.15(b), 610.53(d), and 606.110(b) are included in the estimates under § 601.12(b) in table 1.

Form FDA 356h, ''Application to Market a New or Abbreviated New Drug or Biologic for Human Use,'' is used for the applicable submissions to both CBER and CDER. The application form serves primarily as a checklist for firms to gather and submit certain information to FDA and helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. In addition, the form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. FDA estimates an average of 24 hours to complete the application form, which is included in the average burden per response. The estimated burden hours for nonbiological product submissions to CDER using Form FDA 356h are approved under OMB control number 0910–0001 (an estimated 16,650 submissions × 24 hours = 399,600 hours).

For advertisements and promotional labeling (*e.g.,* circulars, package labels, container labels, etc.) and labeling changes, manufacturers of licensed biological products may submit to CBER or CDER Form FDA 2253. Form FDA 2253 can also be submitted electronically. Form FDA 2253 is approved under OMB control number 0910–0001.

Respondents to this collection of information are manufacturers of biological products. Under table 1, the numbers of respondents are based on the estimated annual number of manufacturers that submitted the required information to FDA or the number of submissions FDA received in fiscal year 2018. Based on information obtained from FDA's database systems, there are an estimated 424 licensed biologics manufacturers. The total annual responses are based on the estimated number of submissions (*i.e.,* license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) for a particular product received annually by FDA. The hours per response are based on information provided by industry and past FDA experience with the various submissions or notifications. The hours per response include the time estimated to prepare the various submissions or notifications to FDA, and, as applicable, the time required to fill out the appropriate form and collate the documentation. Additional information regarding these estimates is provided below as necessary.

Under §§ 601.2 and 601.12, the estimated hours per response are based on the average number of hours to submit the various submissions. The estimated average number of hours is based on the range of hours to complete a very basic application or supplement and a complex application or supplement.

Under section 601.6(a), the total annual responses are based on FDA estimates that establishments may notify an average of 20 selling agents and distributors of such suspension, and provide FDA of such notification. The number of respondents is based on the estimated annual number of suspensions of a biologic license. In

table 1, FDA is estimating one in case a suspension occurs.

Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use Form FDA 2253 to submit advertising and promotional labeling (which can include multiple pieces). Based on information obtained from FDA's database system, the estimate is based on the number of submissions received using Form FDA 2253 for advertising and promotional labeling.

Under §§ 601.28 and 601.70(b), FDA estimates that it takes an applicant approximately 24 hours (8 hours per study × 3 studies) annually to gather, complete, and submit the appropriate information for each postmarketing status report (approximately 2 to 4 studies per report) and the accompanied transmittal Form FDA 2252. Included in these 24 hours is the time necessary to prepare and submit two copies of the annual progress report of postmarketing studies to FDA under § 601.70(d).

Under § 610.15(d), FDA has received no submissions since the implementation of the final rule (''Revision of the Requirements for Constituent Materials'') in April 2011 (76 FR 20513, April 13, 2011). Therefore, FDA is estimating one respondent and one annual request to account for a possible submission to CBER or CDER of a request for an exception or alternative for constituent materials under § 610.15(d).

There were a total of 3,398 amendments to an unapproved application or supplement and resubmissions submitted using Form FDA 356h.

In the **Federal Register** of September 19, 2019 (84 FR 49310), 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 collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [10]
601.2(a),[2] 610.60 through 610.65 [3]	356h	36	1.28	46	860	39,560
601.5(a)	NA	8	1.13	9	0.33 (20 minutes)	3
601.6(a)	NA	1	1	1	0.33 (20 minutes)	1
601.12(a)(5)	NA	430	4.158	1,788	1	1,788
601.12(b)(1) and (3) and (e) [4]	[2] 356h	166	4.843	804	80	64,320
601.12(c)(1) and (3) [5]	[2] 356h	149	4.58	682	50	34,100
601.12(c)(5)	[2] 356h	7	1.14	8	50	400
601.12(d)(1) and (3) [6] and (f)(3) [8]	[2] 356h	245	3.575	876	24	21,024
601.12(f)(1) [7]	2253	65	3.169	206	40	8,240
601.12(f)(2) [7]	2253	43	2.05	88	20	1,760
601.12(f)(4)/601.45 [9]	2253	134	145.86	19,545	10	195,450
601.27(b)	NA	12	1.08	13	24	312
601.27(c)	NA	2	1	2	8	16
601.70(b) and (d)/601.28	2252	65	3.169	206	24	4,944
610.15(d)	NA	1	1	1	1	1
680.1(c)	NA	9	1	9	2	18
680.1(b)(3)(iv)	NA	1	1	1	2	2
Amendments/Resubmissions	356h	136	24.985	3,398	20	67,960
Total						439,899

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirements under §§ 601.14, 601.27(a), 601.33, 601.34, 601.35, 610.9(a), 640.17, 640.25(c), 640.56(c), 640.74(b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) are included in the estimate under § 601.2(a).
[3] The reporting requirements under §§ 601.93(b)(3), 640.74(b)(3) and (4), 640.84(a) and (c), 640.94(a), 660.2(c), 660.28(a) through (c), 660.35(a) through (d), 660.45, and 660.55(a) and (b) are included under §§ 610.60 through 610.65.
[4] The reporting requirements under §§ 601.12(a)(2) and (b)(4), 600.15(b), 610.9(a), 610.53(b), 606.110(b), 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 640.120, and 680.1(d) are included in the estimate under § 601.12(b).
[5] The reporting requirements under §§ 601.12(a)(2), 610.9(a), 640.17, 640.25(c), 640.56(c), and 640.74(b)(2) are included in the estimate under § 601.12(c).
[6] The reporting requirement under § 601.12(a)(2) is included in the estimate under § 601.12(d).
[7] The reporting requirement under § 601.14 is included in the estimate under § 601.12(f)(1) and (2).
[8] The reporting requirement under §§ 601.12(a)(4) and 601.14 is included in the estimate under § 601.12(f)(3).
[9] The reporting requirement under § 601.94 is included in the estimate under § 601.45.
[10] The numbers in this column have been rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
601.6(a)	1	20	20	0.33 (20 minutes)	7

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The number in this column has been rounded to the nearest whole number.

Our estimated burden for the information collection reflects an overall increase of 105,948 hours and a corresponding decrease of 2,671 responses. We attribute this adjustment in the total hours to an increase in the number of submissions we have received under §§ 601.12(b)(1) and (3), (e), and (f)(4), and 601.45 over the last

few years. We attribute the decrease in total annual responses to a decrease in responses received under §§ 601.12(a)(5) and 601.27(b) over the last few years.

Dated: January 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00729 Filed 1–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Maternal, Infant, and Early Childhood Home Visiting Program Home Visiting Budget Assistance Tool, OMB No. 0906–0025—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than February 18, 2020.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting Program Home Visiting Budget Assistance Tool, OMB No. 0906–0025—Revision.

Abstract: HRSA is requesting continued approval of the Home Visiting Budget Assistance Tool (HV–BAT), as modified by HRSA in response to further testing and public comments, as further described below. The tool collects information on standardized cost metrics from programs that deliver home visiting services, as outlined in the HV–BAT. During Fiscal Year (FY) 2020, prior to required use of the tool by awardees starting in FY 2021, HRSA intends to conduct a follow-up study to test the feasibility of the HV–BAT for universal implementation across Maternal, Infant, and Early Childhood Home Visiting (MIECHV) programs and the tool's capacity to support program planning, budget forecasting, fiscal sub-recipient monitoring and to estimate national program costs. In addition, HRSA will investigate the necessary resources and support for successful execution of the HV–BAT prior to initiating the reporting requirement. Upon successful completion of the FY 2020 feasibility study, beginning in FY 2021, HRSA will require reporting of HV–BAT data for one-third of awardees in each 3-year cycle, resulting in collection of data from all awardees over a 3-year time period, to inform program planning and budgeting.

The MIECHV Program, authorized by section 511 of the Social Security Act, 42 U.S.C. 711, and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States, Tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies (LIAs) in order to provide services to eligible families in at-risk communities.

HRSA is revising its originally described HV–BAT data collection purpose. Original clearance under this OMB control number was for pilot testing the reliability of a standardized cost-reporting tool among evidence-based home visiting programs. HRSA has revised the data collection tool to reflect findings and recommendations from the pilot study and in response to public comments to ensure clarity, usability and fidelity, including changes to instructions, definitions and estimated burden.

A 60-day notice was published in the **Federal Register** on August 1, 2019, vol. 84, No. 148, pp. 37655–56. There were eight public comments.

HRSA announced a 60-day public comment period to solicit input on its HV–BAT data collection efforts. In response to this notice, HRSA received feedback on the following aspects:

- Utilization of Data Collection
- Documentation and Reporting Requirements
- Accuracy of the Estimated Burden
- Implementation

HRSA carefully reviewed the comments received and used them to guide the development of the a follow-up HV–BAT feasibility study to be conducted in FY 2020 that will further inform the FY 2021 HV–BAT reporting requirements.

Responses to Comments on the Proposed MIECHV HV–BAT

HRSA received eight responses to the request for public comment. Four commenters are current MIECHV awardees, two are home visiting model developers, one is a national association, and one is an individual respondent. Comments are summarized below.

Utilization of Data Collection

Summary of Comments

Commenters expressed concern over the utility of the HV–BAT as a budget planning tool and its ability to account for variables that differ across models, program populations, providers and settings which could impact cost comparisons. In addition, respondents requested more information on the intended long-term use of the HV–BAT data.

Response

HRSA intends the HV–BAT to inform future budget planning, monitoring, and review of the costs of implementing home visiting at the LIA level in a state and support other programmatic priorities such as cost-benefit analysis and reimbursement policies. The tool in its current state provides information to permit calculation of certain cost metrics, such as cost per family, which can be used to assist in program planning and budget forecasting. Further, the HV–BAT feasibility study will examine the use of the HV–BAT to conduct cost benefit calculations. The feasibility study will also examine how the HV–BAT accounts for other types of cost variation, such as cost of living and inflation. Information collected in the feasibility study will be used to establish standards for implementation.

Documentation and Reporting Requirements

Summary of Comments

Commenters requested clarification around obligations to report cost data for home visiting services funded through sources other than the MIECHV program. In addition, a number of commenters cautioned that the home visiting model used, target population served, and geographic location are all factors that could have a significant impact on cost variation, making it difficult to compare data across models and locations/LIAs.

Response

HRSA intends that use of the HV–BAT is limited to HRSA MIECHV-funded programs. The HV–BAT includes variables that are used to capture variations in demographic information (*e.g.,* percent of families living in rural areas, percent of families of living in poverty). Such variation was not found to be significant in the pilot study, although the HV–BAT feasibility study will further explore how different explanatory variables may affect cost variation in order to better understand how program features drive cost variation to support useful and meaningful comparisons.

Accuracy of Estimated Burden

Summary of Comments

Several commenters indicated that HRSA's estimated burden was too low. In particular, while LIA burden was accounted for, the administrative burden of state awardees was not included. These commenters suggested that HV–BAT reporting requirements would add an administrative burden to state awardees in addition to the burden on LIAs and offered alternative calculations. Additional burden due to the potential competing demands of model fidelity and federal reporting requirements were also noted.

Response

In response to these comments, HRSA has increased the estimated burden to 18 hours per agency (including both LIAs and state-level recipients). HRSA will also explore the ability to adjust the timing of the HV–BAT reporting requirement to accommodate for model-specific quality and fidelity review and reporting conditions.

Implementation

Summary of Comments

Commenters requested HRSA offer more clear and specific guidance on the cost categories and program characteristic data (*e.g.,* defining full-time equivalent, turnover, and program activities) to be collected as part of the HV–BAT to ensure consistency across LIAs and states.

Response

HRSA plans to provide technical assistance materials, such as user guides, frequently asked questions, instrument instructions and definitions of data points for MIECHV awardees to assist recipients in providing data consistent with this notice.

Need and Proposed Use of the Information: Immediately following OMB clearance, during FY 2020, HRSA plans to make the tool available for optional use by MIECHV state awardees prior to requiring its use in FY 2021. Awardees who utilize the HV–BAT during FY 2020 will submit the data collected directly to HRSA. This will allow HRSA to further test the feasibility of collecting comprehensive cost data at the state level; estimate national level costs for use in conducting research and analysis of home visiting costs; understand cost variation; assess how comprehensive program cost data can inform other policy priorities, such as innovative financing strategies; review the data to ensure accuracy; and analyze the data for the purpose of federal research.

Beginning in FY 2021, HRSA will require reporting of HV–BAT data for MIECHV awardees to inform program planning and budgeting as part of their annual formula funding application. HRSA anticipates that one-third of the awardees will participate in this data collection each year as a component of their operational site visit and HRSA will identify the awardees with the HV–BAT reporting requirement in that year. This process will ease burden on awardees by requiring data collection for each awardee once every 3 years and allowing HRSA to capture a national data set every 3 years.

Likely Respondents: MIECHV Program Awardees (n=56).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Number of responses per respondent	Total responses	Average burden hours per response	Total burden hours
Maternal, Infant, and Early Childhood Home Visiting Program Budget Assistance Tool	19	13	247	18	4,446
Total	19		247		4,446

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–00674 Filed 1–16–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau Pediatric Mental Health Care Access Program and the Maternal and Child Health Bureau Screening and Treatment for Maternal Depression and Related Behavioral Disorders Program, OMB No. 0906–xxxx–NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than February 18, 2020.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Evaluation of Maternal and Child Health Bureau Pediatric Mental Health Care Access Program and the Maternal and Child Health Bureau Screening and Treatment for Maternal Depression and Related Behavioral Disorders Program OMB No. 0906–xxxx—[NEW].

Abstract: HRSA's Maternal and Child Health Bureau Pediatric Mental Health Care Access (PMHCA) and Maternal Depression and Related Behavioral Disorders (MDRBD) programs aim to increase identification of behavioral health conditions by screening specified populations (*e.g.,* children, adolescents, young adults, and pregnant and postpartum women, especially those living in rural, isolated, and underserved areas); providing clinical behavioral health consultation; care coordination support (*e.g.,* communication/collaboration, accessing resources, referral services) and training to health care providers; and increasing access to clinical interventions including by telehealth. Provider education and training will support the knowledge and skills acquisition needed to accomplish this goal. PMHCA program is authorized by the Public Health Service Act, § 330M (42 U.S.C. 254c–19), as amended. The MDRBD program is authorized by the Public Health Service Act, § 317L–1 (42 U.S.C. 247b–13a), as amended. In order to evaluate progress made toward the programs' goals, this data collection will use four instruments: Health Care Provider (HCP) Survey, Practice-Level Survey, Program Implementation Survey, and Program Implementation Semi-Structured Interview.

A 60-day notice was published in the **Federal Register** on October 17, 2019, Vol. 84, No. 201, pp. 55579–80. There were no public comments.

Need and Proposed Use of the Information: This information is needed to evaluate the PMHCA and MDRBD Programs by providing HRSA with the necessary information to guide future policy decisions regarding increasing health care providers capacity to address patient's behavioral health and access to behavioral health services. Specifically, data collected for the evaluation will be used to study the efforts of awardee programs to achieve key awardee outcomes (*e.g.,* increase in access to behavioral health services; providers trained; available community-based resources, including counselors or family service providers) and to measure whether and to what extent awardee programs are associated with changes in these key awardee outcomes. The evaluation will also examine changes over time, within a state and/or across the PMCHA and MDRBD programs, with regard to (1) enrolled providers/practices related to screening, referral, and care coordination for behavioral health conditions; (2) provision of behavioral health services for mental health conditions in primary care settings by enrolled health care providers; (3) use of consultative services; and (4) facilitation of access to behavioral health services for mental health conditions.

Likely Respondents: Both HCP and Practice-Level Survey responses will be collected from health care providers and practices that are participating in the PMCHA and MDRBD programs. Likely respondents include:

- HCP Surveys: Physicians, nurse practitioners, physician assistants, nurse midwives (for MDBRD), other health care professionals (*e.g.,* behavioral health providers, case coordinators, nurses, social workers)
- Practice-Level Surveys: Practice managers (*e.g.,* office managers, office leadership, nurse champions)
- Program Implementation Survey and Semi-Structured Interview: PMHCA and MDRBD cooperative agreement-funded Project Directors/Principal Investigators

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Health Care Provider Survey	13,035	3	39,105	0.17	6,648
Practice-Level Survey	4,165	3	12,495	0.25	3,124
Program Implementation Survey	28	3	84	0.50	42

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Program Implementation Semi-Structured Interview	28	1	28	1.00	28
Total	17,256		51,712		9,842

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–00736 Filed 1–16–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year's increase in prices as measured by the Consumer Price Index.

DATES: *Applicable Date:* January 14, 2020 unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, state, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Kendall Swenson, Office of the Assistant Secretary for Planning and Evaluation, Room 422F.5, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 795–7309—or visit *http://aspe.hhs.gov/poverty/.*

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283. You also may visit *https://www.uscis.gov/i-864.*

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Health Resources and Services Administration Information Center at 1–800–638–0742. You also may visit *https://www.hrsa.gov/get-health-care/affordable/hill-burton/index.html.*

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's website at *https://www.census.gov/topics/income-poverty/poverty.html* or contact the Census Bureau's Customer Service Center at 1–800–923–8282 (toll-free) or visit *https://ask.census.gov* for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI–U). The poverty guidelines are used as an eligibility criterion by Medicaid and a number of other Federal programs. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). The guidelines in this 2020 notice reflect the 1.8 percent price increase between calendar years 2018 and 2019. After this inflation adjustment, the guidelines are rounded and adjusted to standardize the differences between family sizes. In rare circumstances, the rounding and standardizing adjustments in the formula result in small decreases in the poverty guidelines for some household sizes even when the inflation factor is not negative. In cases where the year-to-year change in inflation is not negative and the rounding and standardizing adjustments in the formula result in reductions to the guidelines from the previous year for some household sizes, the guidelines for the affected household sizes are fixed at the prior year's guidelines. As in prior years, these 2020 guidelines are roughly equal to the poverty thresholds for calendar year 2019 which the Census Bureau expects to publish in final form in September 2020.

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

2020 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty guideline
1	$12,760
2	17,240
3	21,720
4	26,200
5	30,680
6	35,160
7	39,640
8	44,120

For families/households with more than 8 persons, add $4,480 for each additional person.

2020 POVERTY GUIDELINES FOR ALASKA

Persons in family/household	Poverty guideline
1	$15,950
2	21,550
3	27,150
4	32,750
5	38,350

2020 POVERTY GUIDELINES FOR ALASKA—Continued

Persons in family/household	Poverty guideline
6	43,950
7	49,550
8	55,150

For families/households with more than 8 persons, add $5,600 for each additional person.

2020 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1	$14,680
2	19,830
3	24,980
4	30,130
5	35,280
6	40,430
7	45,580
8	50,730

For families/households with more than 8 persons, add $5,150 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as ''the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).''

Some Federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

This notice does not provide definitions of such terms as ''income'' or ''family'' as there is considerable variation of these terms among programs that use the poverty guidelines. The legislation or regulations governing each program define these terms and determine how the program applies the poverty guidelines. In cases where legislation or regulations do not establish these definitions, the entity that administers or funds the program is responsible to define such terms as ''income'' and ''family.'' Therefore questions such as net or gross income, counted or excluded income, or household size should be directed to the entity that administers or funds the program.

Dated: January 14, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–00858 Filed 1–15–20; 4:15 pm]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0001]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before February 18, 2020.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0001–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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 Request Title: Application for waiver of the two- year foreign residence requirement of the Exchange Visitor Program.

OMB No.: 0990–0001.

Abstract: The HHS program deals with both research and clinical care waivers. Applicant institutions apply to this Department to request a waiver on behalf of research scientists or foreign medical graduates to work as clinicians in HHS designated health shortage areas doing primary care in medical facilities. The instructions request a copy of Form G–28 from applicant institutions represented by legal counsel outside of the applying institution. United States Department of Justice Form G–28 ascertains that legal counsel represents both the applicant organization and the exchange visitor.

Need and Proposed Use of the Information: Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

Likely Respondents: Research scientists and research facilities.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Application Waiver/Supplemental A Research	HHS 426	45	1	10	450
Application Waiver/Supplemental B Clinical Care	HHS 426	35	1	10	350
Total					800

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–00717 Filed 1–16–20; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Early Phase Clinical Trials for Psychosocial Interventions.

Date: February 11, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Early Phase Clinical Trials—Pharma/Device.

Date: February 20, 2020.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00688 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development of Regulatory T-Cell Therapies for the Treatment of Hemophilia A (HA)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to TeraImmune, Inc. (''TeraImmune'') located in Rockville, Maryland.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before February 3, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Dr. Yogikala Prabhu, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 6D, MSC9804, Rockville, MD 20852–9804; Telephone: (301) 496–2644; Facsimile: (240) 627–3117; Email: *prabhuyo@niaid.nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

- U.S. Patent 9,481,866—issued November 1, 2016, entitled ''Methods of Producing T Cell Populations Enriched for Stable Regulatory T-Cells'' [HHS Reference No. E–279–2011/0–US–02]
- U.S. Divisional Application No.15/284,840—filed October 4, 2016, entitled ''Methods of Producing T Cell Populations Enriched for Stable Regulatory T-Cells'. [HHS Reference No. E–279–2011/0–US–03]

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory will be the United States and the field of use will be limited to: ''Human cell-based therapeutics for the treatment of Hemophilia A in patients that have inhibitory Factor VIII antibodies.''

The technology is directed to a method for producing or growing cell populations that are enriched for stable, highly suppressive regulatory T cells (Tregs). Tregs are critical in regulating immune system processes that maintain tolerance to self-antigens and prevent immune mediated diseases. The method takes a population of cells comprising stable, regulatory T cells and enriched for specific CD markers, cultures these cells in the presence of interleukin-2, an anti-CD3 antibody, an anti-CD28 antibody, and oligodeoxynucleotides of specified length having a phosphorothioate backbone, and yields the expansion of the initial population of regulatory T-cells. The expanded Tregs may then be used for the treatment of immune-mediated diseases.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404.

The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent commercialization license. In response to this notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available. License applications submitted in response to this notice will be presumed to contain business confidential information. and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 6, 2020.

Wade W. Green,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2020–00721 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC 7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

Date: February 12–13, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel by Marriott National Harbor, 156 Waterfront Street, National Harbor, MD 20745.

Contact Person: Karen Nieves Lugo, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 594–9088, *karen.nieveslugo@nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Cellular and Molecular Technologies Study Section.

Date: February 12–13, 2020

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Francisco Marriott Fisherman's Wharf, 1250 Columbus Ave., San Francisco, CA 94133.

Contact Person: Chittari V. Shivakumar, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section

Date: February 13–14, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036.

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Metro Center, 775 12th Street NW, Washington, DC 20005.

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC, Bethesda, MD 20892, (301) 451–6319. *rojasr@mail.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Technology Development Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20852, 301–402–9791, *joonil.seog@nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: C–L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Somatosensory and Pain Systems Study Section.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology B Study Section.

Date: February 13–14, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Heidi B. Friedman, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: February 13–14, 2020.

Time: 9:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christine A. Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301–435–0657, *christine.piggee@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00690 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee.

Date: March 3, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700B Rockledge Drive, Room 2118, MSC 6902, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: January 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00691 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST–1 Special Review.

Date: January 27, 2020.

Time: 4:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 14, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00787 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimmunology, Brain Seizures, and Brain Tumors.

Date: February 12, 2020.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

Contact Person: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35).

Date: February 13–14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 408–9694, *petersonjt@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00693 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS National and Regional Resources (R24) Review Meeting.

Date: March 23, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, Conference Room Old Georgetown, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN12N, 45 Center Drive, Bethesda, MD 20892, (301) 827–5320, *manasc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00687 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Member Conflicts.

Date: February 14, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, Conference Room Montgomery, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00686 Filed 1–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0022; OMB No. 1660–0134]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Preparedness Activity Registration and Feedback

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before February 18, 2020.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Christi Collins, AICP, Branch Chief, Preparedness Behavior Change, Individual and Community Preparedness Division (ICPD), National Preparedness Directorate, FEMA, DHS, 400 C Street SW, Washington, DC 20024, 202.615.9865. *Christi.collins@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on November 8, 2019 at 84 FR 60403. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Preparedness Activity Registration and Feedback.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0134 (and moving a survey from Generic Clearance, 1660–0130).

Form Titles and Numbers: FEMA Form 008–0–8 (Preparedness Activity Registration) and FEMA Form 519–0–11 (Preparedness Activity Feedback Form).

Abstract: This collection will allow ICPD to gather the following information from the public via web form(s):

- *Feedback:* General feedback on the effectiveness of national FEMA preparedness programs and initiatives and website user experience
- *Activity Details:* Information regarding the type, size and location of preparedness activities hosted by members of the public and community organizers
- *POC Information:* For registration within the site and follow-on communication, if needed
- *Future Engagement Requests:* Allow for the public to enroll in the ICPD newsletter or other public communications
- *Publication Ordering:* Submitting requests to the FEMA publication warehouse to have materials shipped directly to members of the public

To fulfill its mission FEMA's ICPD collects information from individuals and organizations by the Preparedness Activity Registration Form and the Preparedness Activity Feedback Form located within a public website (called the ''Preparedness Portal''). This collection facilitates FEMA's ability to assess its progress for the following programs:

- Ready 2 Help (*www.ready.gov/game*)
- You Are the Help Until Help Arrives (*www.ready.gov/until-help-arrives*)
- Event Registration (*www.ready.gov/prepare*) (includes Prepareathon event registration)
- Collections where ICPD partners with other National Preparedness Directorate (NPD) offices

As new programs or initiatives are created, ICPD will leverage the pre-approved questions in the question bank provided for this collection. Known future activities include:

- Community-Based Organization Continuity and Resilience Training
- Website User Experience Feedback

ICPD uses this information to inform the continuous improvement of the programs and the Division's outreach. Further, the information allows the Division to analyze seasonal trends in preparedness across the variety of programs. Raw data is not shared outside of the database; only results of the data assessment is shared. The data is used for internal reports as well as public-facing talking points.

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Affected Public: Individuals, organizations and groups who wish to register for ICPD Preparedness activities to take advantage of FEMA's related resources and available supporting materials.

Estimated Number of Respondents: 86,115.

Estimated Number of Responses: 86,115.

Estimated Total Annual Burden Hours: 7,174.

Estimated Total Annual Respondent Cost: $196,424.

Estimated Respondents' Operation and Maintenance Costs: There are no operation and maintenance costs for respondents.

Estimated Respondents' Capital and Start-Up Costs: There are no capital and start-up costs for respondents.

Estimated Total Annual Cost to the Federal Government: $12,205.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption

above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Deputy Director of Information Management, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–00711 Filed 1–16–20; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0108]

RIN 1601–ZA11

Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H–2A and H–2B nonimmigrant status for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 84 countries whose nationals are eligible to participate in the H–2A program and 81 countries whose nationals are eligible to participate in the H–2B program for the coming year.

DATES: The designations in this notice are effective from January 19, 2020, and shall be without effect after January 18, 2021.

FOR FURTHER INFORMATION CONTACT: Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, Washington, DC 20528, (202) 282–9708.

SUPPLEMENTARY INFORMATION:

Background

Generally, USCIS may approve H–2A and H–2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating countries.[1] Such designation must be published as a notice in the **Federal Register** and expires after one year. In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(*1*)(*i*) and 8 CFR 214.2(h)(6)(i)(E)(*1*). Examples of factors serving the U.S. interest that could result in the exclusion of a country or the removal of a country from the list include, but are not limited to: Fraud, abuse, nonimmigrant overstay[2] rates (including but not limited to H–2 nonimmigrants), and other forms of non-compliance with the terms and conditions of the H–2 visa programs by nationals of that country.

USCIS, however, may allow, on a case-by-case basis, a national from a country that is not on the list to be named as a beneficiary of an H–2A or H–2B petition based on a determination that such participation is in the U.S. interest. Determination of such U.S. interest will take into account factors, including but not limited to: (1) Evidence from the petitioner demonstrating that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country currently on the list described in 8 CFR 214.2 (h)(5)(i)(F)(*1*)(*i*) (H–2A nonimmigrants) or 214.2(h)(6)(1)(E)(*1*) (H–2B nonimmigrants), as applicable; (2) evidence that the beneficiary has been admitted to the United States previously in H–2A or H–2B status; (3) the potential for abuse, fraud, or other harm to the integrity of the H–2A or H–2B visa program through the potential admission of a beneficiary from a country not currently on the list; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(*1*)(*ii*) and 8 CFR 214.2(h)(6)(i)(E)(*2*).

In December 2008, DHS published in the **Federal Register** two notices, ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2A Visa Program,'' and ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2B Visa Program,'' which designated 28 countries whose nationals were eligible to participate in the H–2A and H–2B programs. *See* 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010, and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(*2*) and 8 CFR 214.2(h)(6)(i)(E)(*3*). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2915 (Jan. 18, 2011) (removing 1 country and adding 15 countries); 77 FR 2558 (Jan. 18, 2012) (adding 5 countries); 78 FR 4154 (Jan. 18, 2013) (adding 1 country); 79 FR 3214 (Jan.17, 2014) (adding 4 countries); 79 FR 74735 (Dec. 16, 2014) (adding 5 countries); 80 FR 72079 (Nov. 18, 2015) (removing 1 country from the H–2B program and adding 16 countries); 81 FR 74468 (Oct. 26, 2016) (adding 1 country); 83 FR 2646 (Jan. 18, 2018) (removing 3 countries and adding 1 country); 84 FR 133 (Jan. 18, 2019) (removing 2 countries from both the H–2A program

[1] With respect to all references to ''country'' or ''countries'' in this document, it should be noted that the Taiwan Relations Act of 1979, Public Law 96–8, Section 4(b)(1), provides that ''[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.'' 22 U.S.C. 3303(b)(1). Accordingly, all references to ''country'' or ''countries'' in the regulations governing whether nationals of a country are eligible for H–2 program participation, 8 CFR 214.2(h)(5)(i)(F)(*1*)(*i*) and 8 CFR 214.2(h)(6)(i)(E)(*1*), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

[2] An overstay occurs when a nonimmigrant who was lawfully admitted to the United States for an authorized period remains in the United States beyond his or her authorized period of admission. For purposes of this **Federal Register** Notice, DHS uses FY 2018 U.S. Customs and Border Protection H–2A and H–2B nonimmigrant overstay data.

and the H–2B program, removing 1 country from only the H–2B program, and adding 2 countries to both programs and 1 country to only the H–2A program).

Countries With Continued Eligibility

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 84 countries previously designated to participate in the H–2A program in the January 18, 2019 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 81 countries previously designated to participate in the H–2B program in the January 18, 2019 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2B program. These determinations take into account how the regulatory factors identified above apply to each of these countries.

Countries Designated as Eligible

The Secretary of Homeland Security has now determined, with the concurrence of the Secretary of State, that the countries designated as eligible shall remain unchanged for 2020.

Consistent with the 2019 notice, nationals of non-designated countries may still be beneficiaries of approved H–2A and H–2B petitions upon the request of the petitioner if USCIS determines, as a matter of discretion and on a case-by-case basis, that it is in the U.S. interest for the individual to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(5)(i)(F)(*1*)(*ii*) and 8 CFR 214.2(h)(6)(i)(E)(*2*). USCIS may favorably consider a beneficiary of an H–2A or H–2B petition who is not a national of a country included on the H–2A or H–2B eligibility list as serving the national interest, depending on the totality of the circumstances. Factors USCIS may consider include, among other things, whether a beneficiary has previously been admitted to the United States in H–2A or H–2B status and complied with the terms of the program. An additional factor for beneficiaries of H–2B petitions, although not necessarily determinative standing alone, would be whether the H–2B petition qualifies under section 1045 of the National Defense Authorization Act (NDAA) for FY 2020, Public Law 116–92. However, any ultimate determination of eligibility will be made according to all of the relevant factors and evidence in each individual circumstance.

Designation of Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2A nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Brazil
8. Brunei
9. Bulgaria
10. Canada
11. Chile
12. Colombia
13. Costa Rica
14. Croatia
15. Czech Republic
16. Denmark
17. Dominican Republic
18. Ecuador
19. El Salvador
20. Estonia
21. Fiji
22. Finland
23. France
24. Germany
25. Greece
26. Grenada
27. Guatemala
28. Honduras
29. Hungary
30. Iceland
31. Ireland
32. Israel
33. Italy
34. Jamaica
35. Japan
36. Kiribati
37. Latvia
38. Liechtenstein
39. Lithuania
40. Luxembourg
41. Macedonia
42. Madagascar
43. Malta
44. Mexico
45. Moldova
46. Monaco
47. Mongolia
48. Montenegro
49. Mozambique
50. Nauru
51. The Netherlands
52. New Zealand
53. Nicaragua
54. Norway
55. Panama
56. Papua New Guinea
57. Paraguay
58. Peru
59. Poland
60. Portugal
61. Romania
62. Samoa
63. San Marino
64. Serbia
65. Singapore
66. Slovakia
67. Slovenia
68. Solomon Islands
69. South Africa
70. South Korea
71. Spain
72. St. Vincent and the Grenadines
73. Sweden
74. Switzerland
75. Taiwan
76. Thailand
77. Timor-Leste
78. Tonga
79. Turkey
80. Tuvalu
81. United Kingdom
82. Ukraine
83. Uruguay
84. Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2B nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Brazil
8. Brunei
9. Bulgaria
10. Canada
11. Chile
12. Colombia
13. Costa Rica
14. Croatia
15. Czech Republic
16. Denmark
17. Ecuador
18. El Salvador
19. Estonia
20. Fiji
21. Finland
22. France
23. Germany
24. Greece
25. Grenada
26. Guatemala

27. Honduras
28. Hungary
29. Iceland
30. Ireland
31. Israel
32. Italy
33. Jamaica
34. Japan
35. Kiribati
36. Latvia
37. Liechtenstein
38. Lithuania
39. Luxembourg
40. Macedonia
41. Madagascar
42. Malta
43. Mexico
44. Monaco
45. Mongolia
46. Montenegro
47. Mozambique
48. Nauru
49. The Netherlands
50. New Zealand
51. Nicaragua
52. Norway
53. Panama
54. Papua New Guinea
55. Peru
56. Poland
57. Portugal
58. Romania
59. Samoa
60. San Marino
61. Serbia
62. Singapore
63. Slovakia
64. Slovenia
65. Solomon Islands
66. South Africa
67. South Korea
68. Spain
69. St. Vincent and the Grenadines
70. Sweden
71. Switzerland
72. Taiwan
73. Thailand
74. Timor-Leste
75. Tonga
76. Turkey
77. Tuvalu
78. Ukraine
79. United Kingdom
80. Uruguay
81. Vanuatu

This notice does not affect the status of aliens who currently hold valid H–2A or H–2B nonimmigrant status. Aliens currently holding such status, however, will be affected by this notice should they seek an extension of stay in H–2 classification, or a change of status from one H–2 status to another, for employment on or after the effective date of this notice. Similarly, aliens holding nonimmigrant status other than H–2 status are not affected by this notice unless they seek a change of status to H–2 status.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Chad F. Wolf,

Acting Secretary of Homeland Security.

[FR Doc. 2020–00795 Filed 1–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–32]

60-Day Notice of Proposed Information Collection: Disclosure of Adjustable Rate Mortgage (ARM) Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 17, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Barbara Leslie, Director (Acting), Home Mortgage Insurance Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Disclosure of Adjustable Rate Mortgage (ARM) Rates.

OMB Approval Number: 2502–0322.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: Lenders must provide mortgagors with adjustable rate mortgages an annual ARM Disclosure Notice at least 25 days before any adjustment to a mortgagor's monthly payment may occur, and the mortgagee must inform the borrower of the changed interest rate, monthly mortgage amount, the current index interest rate value, and how the payment adjustment was calculated. HUD may review lender loan files to ensure lenders are in compliance.

Respondents: Business or other for-profit (lenders).

Estimated Number of Respondents: 2,440.

Estimated Number of Responses: 108,556.

Frequency of Response: One per FHA-insured adjustable rate loan.

Average Hours per Response: 0.05 hour.

Total Estimated Burdens: 5,437.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 23, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2020–00753 Filed 1–16–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7016–N–06]

60-Day Notice of Proposed Information Collection: Application for Distressed Cities Technical Assistance NOFA

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 17, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Surveys of Recipients and Providers of HUD Technical Assistance and Training.

OMB Approval Number: 2528–0325 (Previously 2506 -0212).

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The surveys in this collection of information are necessary to systematically gather user feedback and outcomes data to evaluate and improve HUD's deployment and management of its technical assistance (TA) resources. The data will be used to comprehensively evaluate the Community Compass program, identify areas for improvement in the program, evaluate the effectiveness of HUD TA interventions, identify trends in TA needs, support the measurement of past performance for future TA NOFAs, and help HUD identify risk within its TA Provider pool. Survey results will also be used by TA Providers and HUD staff to improve individual TA and training engagements.

The previously approved Information Collection (OMB Control No: 2506–0212) included the *Community Development Marketplace (CDM) Project Intake Survey* and the *Survey of Community Partners Receiving HUD Staff-Led Technical Assistance.* These surveys are no longer active and thus are not included in this information collection revision.

Members of affected public: Not-for-profit institutions; State, Local, and Tribal Government.

Estimated Number of Respondents: 10,780.

Estimated Time per Response: 0.2–0.25 hours.

Frequency of Response: 1.1–1.3.

Estimated Total Annual Burden Hours: 2,837.

Estimated Total Annual Cost: $96,919.99.

Legal Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Information collection	Number of respondents[1]	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Provider TA Survey	1,140	[2] 1.1	1,254	0.25	313.5	[3] $44.65	$13,997.78
Recipient TA Survey	1,140	[4] 1.1	1,254	0.25	313.5	[5] 32.86	10,301.61
In-Person Training Survey	3,500	[6] 1.3	4,550	0.2	910	[7] 32.86	29,902.60
Online Training Survey	5,000	[8] 1.3	6,500	0.2	1,300	[9] 32.86	42,718.00

[1] Number of respondents is based on the frequency of TA and training engagements and the number of participants in recent years.

[2] Some TA providers will provide multiple TA engagements and will be asked to complete more than one TA survey in a year.

[3] 75 percentile hourly wage for ''Business and Financial Operations Occupations'' from the Bureau of Labor Statistics (May 2018) *https://www.bls.gov/oes/current/oes130000.htm.*

[4] Some TA recipients will receive multiple TA engagements and will be asked to complete more than one TA survey in a year.

[5] Median hourly wage for ''Business and Financial Operations Occupations'' (May 2018) *https://www.bls.gov/oes/current/oes130000.htm.*

[6] HUD anticipates that roughly 30% of in person trainees will complete multiple trainings and be asked to complete more than one survey in a year.

[7] Median hourly wage for ''Business and Financial Operations Occupations'' from the Bureau of Labor Statistics (May 2018) *https://www.bls.gov/oes/current/oes130000.htm.*

[8] HUD anticipates that roughly 30% of online trainees will complete multiple trainings and be asked to complete more than one survey in a year.

[9] Median hourly wage for ''Business and Financial Operations Occupations'' from the Bureau of Labor Statistics (May 2018) *https://www.bls.gov/oes/current/oes130000.htm.*

Information collection	Number of respondents[1]	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Totals	10,780.00		13,558.00		2,837.00		96,919.99

Compared to the previously-approved information collection, the ''Burden Hours Per Response'' increased slightly for the In-Person and Online Training surveys due to additional questions added to those surveys. However, the total ''Annual Burden Hours'' and total ''Annual Cost'' decreased compared to the previously-approved information collection because two surveys [*Community Development Marketplace (CDM) Project Intake Survey* and the *Survey of Community Partners Receiving HUD Staff-Led Technical Assistance*] were removed from the information collection.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 23, 2019.

Seth D. Appleton,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2020–00754 Filed 1–16–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2019–0118; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Summergate Development, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before February 18, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2019–0118 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2019–0118.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2019–0118; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Summergate Development, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a residential subdivision (project) in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

Summergate Development, LLC requests a 10-year ITP to take sand skinks by converting approximately 3.1 acres of occupied skink foraging and sheltering habitat incidental to the construction of a residential subdivision located on a 57.57-acre parcel in Section 6, Township 23 South, Range 26 East, Lake County, Florida. The applicant proposes to mitigate for take of the sand skinks by purchasing 6.2 credits from a Service-approved Conservation Bank. The Service would require the applicant to make this purchase prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on

federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 56402D–0 to Summergate Development, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office, South Atlantic-Gulf & Mississippi-Basin Regions.

[FR Doc. 2020–00678 Filed 1–16–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N010; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, City of Orange Beach, Baldwin County, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Brett Real Estate Robinson Development Company, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse incidental to construction in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before February 18, 2020

ADDRESSES:

Obtaining Documents: Documents are available for public inspection by appointment during regular business hours at either of the following locations:

- Atlanta Regional Office, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.
- Alabama Ecological Services Office, U.S. Fish and Wildlife Service, 1208 Main Street, Daphne, Alabama.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so by either of the following methods. Please reference TE48280D–0 in all comments.

- *U.S. mail:* You may mail comments to the Fish and Wildlife Service's Atlanta Regional Office.
- *Hand-delivery:* You may hand-deliver comments to the Fish and Wildlife Service's Atlanta or Alabama Office.
- *Email:* You may email comments to *david_dell@fws.gov.* Please include your name and email address in your email. If you do not receive an email from us confirming that we received your message, contact us directly at either telephone number in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: David Dell, Regional HCP and Safe Harbors Coordinator, at the Atlanta Regional Office (see **ADDRESSES**) or by telephone at 404–679–7313, or William Lynn, Project Manager, at the Alabama Ecological Services Office (see **ADDRESSES**) or by telephone at 251–441–5868. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Brett Real Estate Robinson Development Company, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) incidental to the construction of two condominium towers and amenities (project) in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 50-year ITP to take Alabama beach mouse (ABM) incidental to the conversion of approximately 0.45 acres (ac) of the species' occupied habitat for the construction of two condominium towers (192 units) and amenities on a 5.80-ac parcel in Baldwin County, Alabama. A condominium was previously located on the parcel but was destroyed in 2004 by Hurricane Ivan. The parcel was left fallow, and 1.90 ac of ABM habitat re-formed on the site. The applicant proposes to implement standard minimization and mitigation measures to mitigate take of the species. The measures include installing and utilizing sea turtle friendly lighting and tinted windows, landscaping with native vegetation, enhancing the frontal dune area, and constructing driveways with materials that will not disperse in a storm surge. The applicant also will implement refuse control measures during construction and require that future residents continue such implementation. Another measure is restoration of ABM habitat after tropical storms. Free roaming cats and the use of exterior rodenticide would be prohibited within the development. There also will be monitoring of the on-site ABM population via fall and spring trapping surveys (twice a year) over a period of 5 years. Condominium owners would be required to pay an annual fee of $201 per unit over the 50-year term of the ITP. The City of Orange Beach set up a mitigation fund in which fees would be held and used for habitat acquisition, predator control, and/or improvement of Alabama beach mouse habitat elsewhere within the City of Orange Beach limits.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your

comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed minimization and mitigation measures, would individually and cumulatively have a minor or negligible effect on the Alabama beach mouse and the environment. Therefore, we have preliminarily determined that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and comments 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 preceding findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue ITP number TE48280D–0 to Brett Real Estate Robinson Development Company, Inc.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

William Pearson,

Field Supervisor, Alabama Ecological Services Field Office.

[FR Doc. 2020–00672 Filed 1–16–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2019–N056; FXES11130600000–189–FF06E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Topeka Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft recovery plan for Topeka shiner, a fish species listed as endangered under the Endangered Species Act. We are requesting review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before March 17, 2020.

ADDRESSES:

Obtaining documents: Copies of the draft recovery plan are available at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may request a copy by U.S. mail from the Kansas Ecological Services Field Office, U.S. Fish and Wildlife Service, 2609 Anderson Avenue, Manhattan, KS 66502; or via telephone at 785–539–3474.

Submitting comments: Submit comments on the draft recovery plan via email to *kansases@fws.gov,* or to the Field Supervisor at the address above.

Viewing public comments: Comments and materials the Service receives will be available for public inspection by appointment during normal business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Jason Luginbill, Field Supervisor, Kansas Ecological Services Field Office, at the above U.S. mail address, or by telephone at 785–539–3474.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft recovery plan for Topeka shiner (*Notropis topeka*), a fish species listed as endangered under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). We are requesting review and comment from the public on this draft plan.

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. In furtherance of this goal, we prepare recovery plans to help guide recovery efforts and to promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species, establish objective, measurable criteria that, when met, would result in a determination that the species no longer needs the protection of the ESA, and provide estimates of the time and cost for implementing the needed recovery actions.

The ESA requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. We will consider all information we receive during a public comment period when preparing the recovery plan for approval. The Service and other Federal agencies will take these comments into consideration in the course of implementing an approved recovery plan.

It is our policy to request peer review of recovery plans. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan. We will revise the plan between draft and final stages as appropriate, including using information gathered from peer and public review.

Species Information

The Topeka shiner is a small minnow that lives and breeds in low-order prairie streams in the Great Plains States of South Dakota, Minnesota, Nebraska, Iowa, Kansas, and Missouri. It was listed as endangered under the ESA in 1998 (effective in January 1999) because of significant population declines due primarily to alteration of prairie stream hydrology and habitat degradation (63 FR 69008, December 15, 1998). Post-listing, increased survey efforts revealed additional populations not known at the time of listing, particularly in South Dakota and Minnesota, while losses and/or reductions appeared to continue in other States. Since 1999, the Topeka shiner has been documented as occupying over 200 small to mid-size streams. In 2004, the Service also designated critical habitat for the Topeka shiner in Minnesota, Nebraska, and Iowa; areas in South Dakota, Missouri, and Kansas were exempt from the designation due to the existence of management plans (69 FR 44736, July 27, 2004).

Recovery Strategy

The recovery vision for the Topeka Shiner is to have multiple resilient groups of populations, distributed across the species' range, that encompass adequate geographic and genetic diversity of the species to shield it from extirpation by catastrophic events and preserve adaptive potential. To summarize, the recovery criteria are designed to: (1) Maintain the species in currently known occupied habitats across a broad portion of its current ecological settings to preserve future adaptive capacity and potential; (2) maintain, increase, and expand populations in currently known occupied habitats to ensure species persistence by mitigating catastrophic events; (3) increase the ability of populations in currently known occupied habitats to resist impacts of stochastic events and persist long-term; (4) and ensure management plans are in place for each of nine population complexes or by state, to ensure future maintenance of those complexes, as well as that of the populations/sub-populations within them. To accomplish conservation and recovery of the Topeka shiner, recovery actions need to be implemented that include the following general categories: Habitat protection, management, and restoration; population management, augmentation, translocations, and reintroductions; monitoring; research; collaboration with stakeholders; and education and outreach.

Request for Public Comments

The Service solicits public comments on the draft recovery plan. All comments we receive by the date specified (see **DATES**) will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent via the means in the **ADDRESSES** section.

We are specifically seeking comments and suggestions on the following questions:

—Understanding that the time and cost presented in the draft recovery plan will be revised when localized recovery implementation strategies are developed, are the estimated time and cost to recovery realistic? Is the estimate reflective of the time and cost of similar previous actions that have already been implemented? Please provide suggestions or methods for determining a more accurate estimation of time and cost.

—Do the draft recovery criteria provide clear direction to partners on what is needed to recover the species? How could they be improved for clarity?

—Are the draft recovery criteria both objective and measurable given the information available for this species now and into the future? Please provide suggestions to improve the objectivity and measurability of criteria.

—Understanding that specific, detailed, and area-specific recovery actions will be developed in the localized recovery implementation strategies, do the draft recovery actions presented in the draft recovery plan generally cover the types of actions necessary to meet the recovery criteria? If not, what general actions are missing? Are any of the draft recovery actions unnecessary for achieving recovery? Are the draft recovery actions prioritized appropriately?

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. You may request at the top of your comment that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 19, 2019.

Noreen Walsh,

Regional Director, Lakewood, Colorado.

Editorial note: This document was received for publication by the Office of the Federal Register on January 14, 2020.

[FR Doc. 2020–00718 Filed 1–16–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N007; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Perdido Key Beach Mouse, Baldwin County, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the city of Orange Beach (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Perdido Key beach mouse incidental to construction in Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our low-effect screening form, which is also available for public review.

DATES: We must receive your written comments on or before February 18, 2020.

ADDRESSES:

Obtaining Documents: Documents are available for public inspection by appointment during regular business hours at either of the following locations:

- Atlanta Regional Office, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.
- Panama City Ecological Services Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Ave., Panama City, Florida.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so by any one of the following methods. Please reference TE48931D–0 in all comments. For additional guidance on submitting comments, please see Public Comments under **SUPPLEMENTARY INFORMATION**.

- *U.S. mail:* You may mail comments to the Fish and Wildlife Service's Atlanta Regional Office.
- *Hand-delivery:* You may hand-deliver comments to the Atlanta or the Florida offices.
- *Email:* You may email comments to *Christine_Willis@fws.gov.* Please include your name and email address in your message. If you do not receive an email confirmation from us that we have received your email message, contact us directly at either telephone number in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Christine Willis, Assistant Regional HCP Coordinator, at the Atlanta Regional Office (see **ADDRESSES**) or by telephone at 404–679–7310 or Kristi Yanchis, Project Manager, at the Panama City Ecological Services Field Office (see **ADDRESSES**) or by telephone at 850–769–0552. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from the city of Orange Beach, Alabama (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis;* PKBM), incidental to construction in occupied PKBM habitat in Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are available for public review.

Project

The applicant requests a 30-year ITP to take PKBM via the conversion of approximately 36.87 acres (ac) of occupied PKBM habitat on 73.74-ac parcel incidental to construction. The 73.74-ac parcel also contains 32.97 ac of PKBM critical habitat. The city of Orange Beach HCP (TE48931D) proposes minimization measures that are consistent with the previously approved Escambia County Perdido Key HCP permit (TE46592A) including proactive planning, conservation corridors, seasonality considerations, predator control, trash collection, dune restoration, wildlife lighting, vehicle access management, and public education. To mitigate for unavoidable impacts, contributions will be made to an in-lieu fee mitigation fund, and annual assessment fees will be paid into a PKBM fund.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's program, including land clearing, infrastructure building, landscaping, and proposed minimization and mitigation measures, would individually and cumulatively have a minor or negligible effect on the PKBM and the environment. Therefore, we have preliminarily concluded that the requested ITP would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments 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)(l)(B) of the ESA have been met. If met, the Service will issue ITP number TE48931D to the city of Orange Beach.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Sean Blomquist,

Acting Field Supervisor, Panama City Field Office.

[FR Doc. 2020–00680 Filed 1–16–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2020–0001; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Scrub-Jay, Brevard County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Dean Wooley (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed scrub-jay incidental to construction in Brevard County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before February 18, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2020–0001 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2020–0001.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2020–0001; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Dean Wooley (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens*) incidental to the construction of a residential development (project) in Brevard County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and

low-effect screening form, which are also available for public review.

Project

Dean Wooley requests a 5-year ITP to take scrub-jays incidental to converting approximately 1.02 acres (ac) of occupied scrub-jay foraging and sheltering habitat incidental to the construction of residential homes located on five lots with Tax ID numbers 2943000, 2942922, 2942997, 2942925, and 2942940, totaling 6.73 ac in Section 27, Township 29 South, and Range 37 East, Brevard County, Florida. The applicant proposes to mitigate for take of the scrub-jays by contributing $58,507.00 to the Florida Scrub-jay Conservation Fund, which is administered by The Nature Conservancy. The Service would require the applicant to make this contribution prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on the scrub-jays and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 56400D–0 to Dean Wooley.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020–00663 Filed 1–16–20; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–614 and 731–TA–1431 (Final)]

Magnesium From Israel

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 not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of magnesium from Israel, provided for in subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of Israel.

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective October 24, 2018, following receipt of petitions filed with the Commission and Commerce by US Magnesium LLC, Salt Lake City, Utah. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of magnesium from Israel 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 August 5, 2019 (84 FR 38057). The hearing was held in Washington, DC, on November 21, 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 13, 2020. The views of the Commission are contained in USITC Publication 5009 (January 2020), entitled *Magnesium from Israel: Investigation Nos. 701–TA–614 and 731–TA–1431 (Final).*

By order of the Commission.

Issued: January 13, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00697 Filed 1–16–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Civil Rules; Meeting of the Judicial Conference

AGENCY: Advisory Committee on Civil Rules, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Civil Rules will hold a meeting on April 1, 2020. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: April 1, 2020; 9 a.m.–5 p.m.

ADDRESSES: Hilton Hotel, 600 Okeechobee Blvd., West Palm Beach, FL 33401.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall

Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

(Authority: 28 U.S.C. 2073)

Dated: January 14, 2020.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2020–00716 Filed 1–16–20; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–573]

Importer of Controlled Substances Application: S&B Pharma, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 18, 2020. Such persons may also file a written request for a hearing on the application on or before February 18, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 18, 2019, S&B Pharma, Inc., dba: Norac Pharma, 405 South Motor Avenue, Azusa, California 91702–3232 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Tapentadol	9780	II

The company plans to import the listed controlled substances in bulk for the manufacture of controlled substances for distribution to its customers.

Dated: December 19, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–00661 Filed 1–16–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 13, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States* v. *Dayton Industrial Drum, Inc., et al.,* Civil Action No. 3:16–cv–232–WHR.

In June 2016, the United States filed suit against Dayton Industrial Drum, Inc. and Sunoco, Inc. (''Sunoco'') under the Comprehensive Environmental Response, Compensation, and Liability Act for the recovery of response costs incurred at the Lammers Barrel Superfund Site in Beavercreek, Ohio (the ''Site''). The Consent Decree resolves the liability of Sunoco and the alleged liability of its indemnitor, Carboline Company, at the Site for a total of $1,300,000.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Dayton Industrial Drum, Inc.,* D.J. Ref. No. 90–11–3–07706/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–00730 Filed 1–16–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1771]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is updating its meeting notice, published on December 20, 2019, because it has re-scheduled the meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ), that had been scheduled for January 7, 2020, but was postponed due to inclement weather causing early closure of Washington, DC-area federal offices on the scheduled meeting date.

DATES: The re-scheduled meeting date is February 5, 2020 at 2–3 p.m. ET.

ADDRESSES: The meeting will take place remotely via webinar.

FOR FURTHER INFORMATION CONTACT: Visit the website for the FACJJ at *www.facjj.ojp.gov* or contact Elizabeth Wolfe, Designated Federal Official (DFO), OJJDP, by telephone at (202) 598–9310, email at *elizabeth.wolfe@ojp.usdoj.gov;* or Maegen Barnes, Senior Program Manager/Federal Contractor, by telephone (732) 948–8862, email at *maegen.barnes@bixal.com,* or fax at (866) 854–6619. Please note that the above phone/fax numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and

territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.ojp.gov.*

FACJJ meeting agendas are available on *www.facjj.ojp.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion; and (c) member announcements.

The meeting will be available online via Adobe Connect, a video conferencing platform. Members of the public who wish to participate must register in advance of the meeting online at FACJJ Meeting Registration, no later than Friday January 31, 2020. Should issues arise with online registration, or to register by fax or email, the public should contact Maegen Barnes, Senior Program Manager/Federal Contractor (see above for contact information).

Interested parties may submit written comments and questions in advance to Elizabeth Wolfe (DFO) for the FACJJ, at the contact information above. If faxing, please follow up with Maegen Currie, Senior Program Manager/Federal Contractor (see above for contact information) in order to assure receipt of submissions. All comments and questions should be submitted no later than 5 p.m. ET on Friday January 31, 2020.

The FACJJ will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the FACJJ.

Elizabeth Wolfe,

Training and Outreach Coordinator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2020–00692 Filed 1–16–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Trade Adjustment Assistance (TAA) Efforts To Improve Outcomes

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Trade Adjustment Assistance (TAA) Efforts to Improve Outcomes,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 18, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201912-1205-003* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Trade Adjustment Assistance (TAA) Efforts to Improve Outcomes. TAA Efforts to Improve Outcomes is a data collection and reporting system that supplies critical information on the operation of the TAA program and the outcomes for its participants. Information is required to be collected by state, and is used by local, state, and federal agencies to (1) report program management information to Congress and other Federal agencies, and (2) to improve the effectiveness of job training programs. This information collection is a revision, because the collection is being modified significantly as to no longer require the submission of individual participant records under the Trade Activity Participant Report (TAPR). Trade Act of 1974, as amended sections 2311 and 2323 authorize this information collection. *See* 19 U.S.C. 2311, 2323.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0392. The current approval is scheduled to expire on January 30, 2020; however, the DOL notes that existing information collection requirements submitted to the OMB will receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 25, 2019 (84 FR 50475).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0392. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Trade Adjustment Assistance (TAA) Efforts to Improve Outcomes.

OMB Control Number: 1205–0392.

Affected Public: State, Local and Tribal Governments; Individuals or Households.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 208.

Total Estimated Annual Time Burden: 104 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 14, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–00765 Filed 1–16–20; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–002)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, February 6, 2020, 2:00 p.m. to 3:15 p.m., Local Time.

ADDRESSES: NASA Kennedy Space Center, Headquarters Building, Room 4436, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, Administrative Officer, Aerospace Safety Advisory Panel, NASA Headquarters, Washington, DC 20546, (202) 358–1947 or *lisa.m.hackley@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its First Quarterly Meeting for 2020. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the International Space Station Program
—Updates on the Commercial Crew Program
—Updates on Exploration System Development Program
—Updates on Human Lunar Exploration Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (800) 593–9979; pass code 8001361 and then the # sign. Attendees will be required to sign a visitor's register and to comply with NASA KSC security requirements, including the presentation of a valid picture ID and a secondary form of ID, before receiving an access badge. All U.S. citizens desiring to attend the ASAP 2020 First Quarterly Meeting at the Kennedy Space Center must provide their full name, date of birth, place of birth, social security number, company affiliation and full address (if applicable), residential address, telephone number, driver's license number, email address, country of citizenship, and naturalization number (if applicable) to the Kennedy Space Center Protective Services Office no later than close of business on January 27, 2020. If all the information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the KSC Badging Office, Building M6–0224, located just outside of KSC Gate 3, on SR 405, Kennedy Space Center, Florida. Please provide the appropriate data required above by email to Tina Delahunty at *tina.delahunty@nasa.gov* or fax 321–867–7206, noting at the top of the page ''Public Admission to the NASA Aerospace Safety Advisory Panel Meeting at KSC.'' For security questions, please email Tina Delahunty at *tina.delahunty@nasa.gov.* At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–00734 Filed 1–16–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Suspicious Activity Report

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before March 17, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6060, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0094.

Title: Suspicious Activity Report, 12 CFR part 748.1.

Form: None.

Type of Review: Extension of a currently approved collection.

Abstract: The Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA) (31 U.S.C. 5318(g)). FinCEN joined with the bank regulators in adopting and requiring reports of suspicious transactions on a consolidated suspicious activity report (SARs) form. This simplified the process through which banks inform their regulators and law enforcement about suspected criminal activity. In 2011, FinCEN transitioned from industry specific paper forms to one electronically filed dynamic and interactive BSA–SAR for use by all filing institutions. Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving credit unions are collected through FinCEN's BSA E-filing system by credit unions. A SAR is to be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the period for filing a SAR is extended to 60 days. FinCEN and law enforcement agencies use the information on BSA–SARs and the supporting documentation retained by the banks for criminal investigation and prosecution purposes.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 5,277.

Estimated No. of Responses per Respondent: 36.64.

Estimated Total Annual Responses: 193,364.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 193,364.

Reason for Change: The increase in the burden is due to the increase in the number of Suspicious Activity Reports (SARs) filed by federally insured credit unions.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on January 14, 2020.

Dated: January 14, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020–00752 Filed 1–16–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Office of International Science and Engineering—PIRE: International Partnership for Cirrus Studies Reverse Site Visit (10749).

Date and Time: February 12, 2020; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

Type of Meeting: Part open.

Contact Person: Cassandra Dudka, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF reverse site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the reverse site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 14, 2020.

Crystal Robinson,

Committee Management Officer.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314

Partnerships for International Research and Education (PIRE)

Reverse Site Visit Agenda

PIRE: International Partnership for Cirrus Studies

(PI: Moyer)

NSF Room W2190

Date: February 12, 2020

8:00 a.m. Panelists arrive. Coffee/light refreshments available
8:15 a.m.–8:45 a.m. Panel Orientation (CLOSED)
PIRE Rationale and Goals
Charge to Panel
8:45 a.m. PIs Arrive/Introductions
9:00 a.m.–11:00 a.m. PIRE Project Presentation
Overview of the Project and Project Management
Research Accomplishments and Impacts to Date
Benefits of International Partnerships
Integrating Research and Education
Educational Impact on Students
Research Plan and Future Activities to Achieve the Projects Goals
11:00 a.m.–11:30 a.m. Questions and Answers
12:00 p.m.–1:30 p.m. Working Lunch—Panel Discussion—(CLOSED)
1:30 p.m.–2:00 p.m. Student recruitment
Diversity
Communication and Outreach
Evaluation and Assessment
Institutional Support
2:00 p.m.–3:00 p.m. Initial Feedback to the PIRE Project Team (CLOSED)
3:00 p.m. PIRE Project Team is dismissed
3:00 p.m.–4:30 p.m. Panel Meets to Prepare Reverse Site Visit Report (CLOSED)
4:30 p.m.–4:45 p.m. Panel Meets with NSF Staff to Discuss the Report (CLOSED)
5:00 p.m. End of Reverse Site Visit

[FR Doc. 2020–00715 Filed 1–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Office of International Science and Engineering—PIRE: Black Hole Astrophysics in the Era of Distributed Resources and Expertise—Reverse Site Visit (#10749).

Date and Time: February 13, 2020; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria VA 22314.

Type of Meeting: Part open.

Contact Person: Cassandra Dudka, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF reverse site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See Attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the reverse site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 14, 2020.

Crystal Robinson,

Committee Management Officer.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314

Partnerships for International Research and Education (PIRE)

Reverse Site Visit Agenda

PIRE: Black Hole Astrophysics in the Era of Distributed Resources and Expertise

(PI: Psaltis)

NSF Room W17000

Date: February 13, 2020

8:00 a.m. Panelists arrive. Coffee/light refreshments available.
8:15 a.m.–8:45 a.m. Panel Orientation (CLOSED)
PIRE Rationale and Goals
Charge to Panel
8:45 a.m. PIs Arrive/Introductions
9:00 a.m.–11:00 a.m. PIRE Project Presentation
Overview of the Project and Project Management
Research Accomplishments and Impacts to Date
Benefits of International Partnerships
Integrating Research and Education
Educational Impact on Students
Research Plan and Future Activities to Achieve the Projects Goals
11:00 a.m.–11:30 a.m. Questions and Answers
12:00 p.m.–1:30 p.m. Working Lunch—Panel Discussion—(CLOSED)
1:30 p.m.–2:00 p.m. Student recruitment
Diversity
Communication and Outreach
Evaluation and Assessment
Institutional Support
2:00 p.m.–3:00 p.m. Initial Feedback to the PIRE Project Team (CLOSED)
3:00 p.m. PIRE Project Team is dismissed
3:00 p.m.–4:30 p.m. Panel Meets to Prepare Reverse Site Visit Report (CLOSED)
4:30 p.m.–4:45 p.m. Panel Meets with NSF Staff to Discuss the Report (CLOSED)
5:00 p.m. End of Reverse Site Visit

[FR Doc. 2020–00714 Filed 1–16–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286; NRC–2020–0019]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit No. 3: Revise Technical Specifications 3.7.6 and 3.7.7

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–64, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit No. 3 (Indian Point Unit 3 or IP3). The proposed amendment would modify Technical Specification (TS) 3.7.7, ''City Water (CW),'' Surveillance Requirement (SR) 3.7.7.2, and TS 3.7.6, ''Condensate Storage Tank (CST),'' Required Action A.1.

DATES: Submit comments by February 18, 2020. Requests for a hearing or petition for leave to intervene must be filed by March 17, 2020.

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–2020–0019. 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 listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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: Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1030; email: *Richard.Guzman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0019 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–2020–0019.
- *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 license amendment request dated November 21, 2019, is available in ADAMS under Accession No. ML19325E913.
- *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–2020–0019 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. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. DPR–64 issued to Entergy Nuclear Operations, Inc., for operation of Indian Point Unit 3, located in Westchester County, New York. Specifically, the proposed amendment would revise TS SR 3.7.7.2 to allow one of the backflow preventer isolation valves on the Indian Point Unit 3 city water (CW) header supply to be maintained closed when in the modes of applicability for TS Limiting Condition for Operation (LCO) 3.7.7 (*i.e.,* during Modes 1, 2, and 3, and Mode 4 when the steam generators are relied upon for heat removal), provided that the requirements of TS LCO 3.7.6 are met. The proposed change would eliminate intrusion of CW into the auxiliary feedwater (AFW) system and the CST due to leak-by past a downstream isolation valve and allow removal of a temporary modification that provides continuous flushing of the 33 AFW pump suction line. In addition, the proposed amendment would revise TS 3.7.6 Required Action A.1 to require the closed backflow preventer isolation valve on the Indian Point Unit 3 CW header supply to be reopened immediately in the event that the CST is declared inoperable.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would modify IP3 TS SR 3.7.7.2 to allow one of the backflow preventer isolation valves on the IP3 CW Header Supply to be maintained closed, provided the requirements of TS LCO 3.7.6 are met. In addition, the proposed change to TS 3.7.6 Required Action A.1 would require the closed backflow preventer isolation valve to be re-opened immediately in the event the CST is declared inoperable. The proposed changes to SR 3.7.7.2 and TS 3.7.6, Required Action 1 do not affect any initiator or precursor of any accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The CST is the preferred source of water for the AFW System, and this remains unchanged. The consequences of accidents or events in which the AFW is credited or required are normally mitigated by operation of the AFW System. The CW system can be used as a backup to the CST in the event the CST is unavailable for any reason, including due to CST damage from a tornado-generated missile.

In order to place the CW System in service, the proposed changes will add a field action by a nuclear plant operator to open one of the backflow preventer isolation valves on the IP3 CW Header Supply, in addition to the already required manual action to open the individual AFW pump suction valves from the control room. The proposed changes will also require the closed backflow preventer isolation valve on the IP3 CW Header Supply to be re-opened immediately in the event the CST is declared inoperable. As a result, the CW system will continue to provide a reliable means of backup cooling to the AFW pumps. Therefore, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment would modify IP3 TS SR 3.7.7.2 to allow one of the backflow preventer isolation valves on the IP3 CW Header Supply to be maintained closed, provided the requirements of TS LCO 3.7.6 are met. In addition, the proposed changes to TS 3.7.6, Required Action A.1 would require the closed backflow preventer isolation valve to be re-opened immediately in the event the CST is declared inoperable.

The proposed amendment will not involve any physical changes to the existing plant, so no new malfunctions could create the possibility of a new or different kind of accident. The proposed amendment makes no changes to conditions external to the plant that could create the possibility of a new or different kind of. accident. The proposed change will not create the possibility of a new or different kind of accident as no new accident initiators, precursors, failure mechanisms, or malfunctions are being introduced by the proposed changes.

The AFW System, the CST, and the CW System will continue to perform their design basis cooling functions for previously evaluated accidents or events for which the AFW System is credited or required. The normal source of CST cooling water for the AFW pumps is unaffected by the proposed changes. The AFW System is provided sufficient redundancy of water supplies such that the alternate source of water from the CW System is available in the event the CST is unavailable.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment would modify IP3 TS SR 3.7.7.2 to allow one of the backflow preventer isolation valves on the IP3 CW Header Supply to be maintained closed, provided the requirements of TS LCO 3.7.6 are met. In addition, the proposed changes to TS 3.7.6, Required Action A.1 would require the closed backflow preventer isolation valve to be re-opened immediately in the event the CST is declared inoperable.

The change does not exceed or alter any controlling numerical value for a parameter established in the FSAR [Final Safety Analysis Report] or elsewhere in the IP3 licensing basis related to design basis or safety limits. Entergy has performed a risk assessment in support of the proposed amendment and concluded that this change is not risk significant.

The proposed changes only affect the manual actions required to place the CW system in service. No automatic actions are affected by the proposed changes. This request does not replace an automatic action with a manual action, isolate a safety related source of water that was previously unisolated, or close a valve that was previously required to be locked open. The CW system will continue to provide a

reliable means of backup cooling to the AFW pumps.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person

making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the licensee's application dated November 21, 2019 (ADAMS Accession No. ML19325E913).

Attorney for licensee: Bill Glew, Associate General Counsel, Entergy Services, Inc., 639 Loyola Avenue, 22nd Floor, New Orleans, LA 70113.

NRC Branch Chief: James G. Danna.

Dated at Rockville, Maryland, this 13th day of January, 2020.

For the Nuclear Regulatory Commission.

Richard V. Guzman, Sr.,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–00695 Filed 1–16–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Public Comment on Draft Desirable Characteristics of Repositories for Managing and Sharing Data Resulting From Federally Funded Research

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Request for Comments.

SUMMARY: The White House Office of Science and Technology Policy is seeking public comments on a draft set of desirable characteristics of data repositories used to locate, manage, share, and use data resulting from Federally funded research. The purpose of this effort is to identify and help Federal agencies provide more consistent information on desirable characteristics of data repositories for data subject to agency Public Access Plans and data management and sharing policies, whether those repositories are operated by government or non-governmental entities. Optimization and improved consistency in agency-provided information for data repositories is expected to reduce the burden for researchers. Feedback obtained through this Request for Comments (RFC) will help to inform coordinated agency action.

DATES: To ensure that your comments will be considered, please submit your response on or before 11:59 p.m. ET on March 6, 2020.

ADDRESSES: Comments should be submitted online to: *OpenScience@ostp.eop.gov.* Email submissions should be machine-readable [pdf, word] and not copy-protected. Submissions should include ''RFC Response: Desirable Repository Characteristics'' in the subject line of the message.

Instructions: Response to this RFC is voluntary. Each individual or institution is requested to submit only one response. Submission should not exceed 5 pages in 12 point or larger font, and should be paginated. Responses should include the name and organizational affiliation(s) of the person(s) filing the comment. Additionally, to assist in analyzing responses, respondents are requested to indicate the primary scientific discipline(s) in which they work (*e.g.,* life sciences, physical sciences, social sciences) and their role (*e.g.,* researcher, librarian, data manager, administrator). Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Comments containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this notice are subject to FOIA. Responses to this RFC may also be posted, without change, on a Federal website. Therefore, we request that no business proprietary information, copyrighted information, or personally identifiable information (beyond filing name and institution) be submitted in response to this RFC.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: Lisa Nichols at *OpenScience@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Subcommittee on Open Science (SOS) of the National Science and Technology Council's Committee on Science (*https://www.whitehouse.gov/ostp/nstc/*) convenes more than twenty Federal departments and agencies (hereafter ''agencies'') that support research and development (R&D). It aims to advance open science and foster implementation of agency Public Access Plans that were developed in response to the 2013 White House Office of Science and Technology Policy (OSTP) memorandum entitled ''Increasing Access to the Results of Federally Funded Scientific Research'' that called for improved access to data and publications resulting from Federally funded R&D. [For more information on agency Public Access Plans, see *https://www.cendi.gov/projects/Public_Access_Plans_US_Fed_Agencies.html.* For more explanation regarding Federally funded research data, see 2 CFR 200.315(e)(3).] One goal of the Subcommittee's efforts is to improve the consistency of guidelines and best practices that agencies provide about the long-term preservation of data from Federally funded research, including suitable repositories for preserving and providing access to such data, considering agency missions, best practices, and relevant standards. According to OMB Circular A–81, section 200.315, ''Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues.'' [See: *https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards#sec-200-315.*] These efforts are consistent with and supportive of other Administration priorities, such as the Federal Data Strategy and its associated set of Practices to leverage data as a strategic asset [For more information on Federal Data Strategy Practices, see *https://strategy.data.gov/practices/*].

In support of its work, the SOS has developed a proposed set of desirable characteristics of data repositories for data resulting from Federally funded research. The proposed characteristics could apply to repositories operated by government or non-governmental entities. They draw from agency experience in developing and supporting data repositories and build on existing information for selecting repositories that agencies developed as part of their public access policies. Through public comment, the SOS aims to refine and develop a common set of characteristics that Federal R&D-funding agencies can use to support their Public Access and data sharing efforts.

These characteristics are not intended to be an exhaustive set of design features for data repositories. Federal agencies would not plan to use these characteristics to assess, evaluate, or certify the acceptability of a specific data repository, unless otherwise specified for a particular agency program, initiative, or funding opportunity. Rather, the set of characteristics is intended to be used as a tool for agencies and Federally funded investigators when, for example, they are:

- Assisting Federally funded investigators in identifying data repositories to use for storing and providing access to research data (*e.g.,* when funding agencies do not host the data and/or have not designated specific repositories for use);
- Identifying specific repositories that a Federal agency might designate for use for particular types of research data resulting from Federally funded research;

- Developing Federal agency repositories to store data resulting from Federally funded research;
- Informing external data repository developers and managers of the characteristics desired by Federal agencies for storing and preserving data resulting from Federally funded research;
- Evaluating data management plans that propose to deposit research data in a repository that is not operated by a Federal agency.

Consistent with their Public Access Plans, SOS member agencies have proposed characteristics to help support discoverability, management, and sharing of research data, in a user-friendly manner, consistent with principles becoming widely adopted in the research community to make data findable, accessible, interoperable, and reusable (FAIR). [For information on the FAIR principles, see *https://www.go-fair.org/fair-principles*.] The proposed characteristics are intended to be consistent with criteria that are increasingly used by non-Federal entities to certify data repositories, such as ISO16363 Standard for Trusted Digital Repositories and CoreTrustSeal Data Repositories Requirements, so that repositories with such certifications would generally exhibit these characteristics. SOS member agencies also anticipate that many repositories without such certifications would exhibit them as well. While the desirable characteristics are intended to be enduring, Federal agencies might update them periodically to reflect changing expectations, rapid evolution of research and technology, and practices related to data management and sharing.

This RFC, released on behalf of Federal agencies that are members of the SOS, aims to solicit public input on proposed characteristics for selecting or developing a repository for managing and sharing data that embody effective management and stewardship over data resulting from Federally funded research. Feedback obtained through this RFC will help to inform the development of coordinated Federal agency technical and policy guidance on repositories for research data.

Request for Comments

Federal agencies are specifically requesting public comment on the Draft Desirable Characteristics of Repositories to Consider for Managing and Sharing Data Resulting from Federally Funded or Supported Research, found below. The proposed characteristics include ''Desirable Characteristics for All Data Repositories'' (Section I), as well as ''Additional Considerations for Repositories Storing Human Data (even if de-identified)'' (Section II), found below. Note that Federal agencies are subject to additional requirements that must be met for repositories they manage or support, such as considerations of security, privacy, and accessibility.

Response to this Notice is voluntary, and respondents are free to address any or all of the topics listed below and should not feel compelled to address all items:

- The proposed use and application of the desirable characteristics (as described in the ''Background'' section above)
- The appropriateness of the ''Desirable Characteristics for All Data Repositories'' (Section I) for data repositories that would store and provide access to data resulting from Federally-supported research, considering:
  - Characteristics that are included
  - Additional characteristics that should be included
- Appropriateness of the characteristics listed in the ''Additional Considerations for Repositories Storing Human Data (even if de-identified)'' (Section II) delineated for repositories maintaining data generated from human samples or specimens, considering:
  - Characteristics that are included
  - Additional characteristics that should be included
- Considerations for any other repository characteristics which should be included to address the management and sharing of unique data types (*e.g.,* special or rare datasets)
- The ability of existing repositories to meet the desirable characteristics
- Consistency of the desirable characteristics with widely used criteria or certification schemes for certifying data repositories
- Any other topic which may be relevant for Federal agencies to consider in developing desirable characteristics for data repositories.

DRAFT Desirable Characteristics of Repositories for Managing and Sharing Data Resulting From Federally Funded or Supported Research

I. Desirable Characteristics for All Data Repositories

A. *Persistent Unique Identifiers:* Assigns datasets a citable, persistent unique identifier (PUID), such as a digital object identifier (DOI) or accession number, to support data discovery, reporting (*e.g.,* of research progress), and research assessment (*e.g.,* identifying the outputs of Federally funded research). The PUID points to a persistent landing page that remains accessible even if the dataset is de-accessioned or no longer available.

B. *Long-term sustainability:* Has a long-term plan for managing data, including guaranteeing long-term integrity, authenticity, and availability of datasets; building on a stable technical infrastructure and funding plans; has contingency plans to ensure data are available and maintained during and after unforeseen events.

C. *Metadata:* Ensures datasets are accompanied by metadata sufficient to enable discovery, reuse, and citation of datasets, using a schema that is standard to the community the repository serves.

D. *Curation & Quality Assurance:* Provides, or has a mechanism for others to provide, expert curation and quality assurance to improve the accuracy and integrity of datasets and metadata.

E. *Access:* Provides broad, equitable, and maximally open access to datasets, as appropriate, consistent with legal and ethical limits required to maintain privacy and confidentiality.

F. *Free & Easy to Access and Reuse:* Makes datasets and their metadata accessible free of charge in a timely manner after submission and with broadest possible terms of reuse or documented as being in the public domain.

G. *Reuse:* Enables tracking of data reuse (*e.g.,* through assignment of adequate metadata and PUID).

H. *Secure:* Provides documentation of meeting accepted criteria for security to prevent unauthorized access or release of data, such as the criteria described in the International Standards Organization's ISO 27001 (*https://www.iso.org/isoiec-27001-information-security.html*) or the National Institute of Standards and Technology's 800–53 controls (*https://nvd.nist.gov/800-53*).

I. *Privacy:* Provides documentation that administrative, technical, and physical safeguards are employed in compliance with applicable privacy, risk management, and continuous monitoring requirements.

J. *Common Format:* Allows datasets and metadata to be downloaded, accessed, or exported from the repository in a standards-compliant, and preferably non-proprietary, format.

K. *Provenance:* Maintains a detailed logfile of changes to datasets and metadata, including date and user, beginning with creation/upload of the dataset, to ensure data integrity.

II. Additional Considerations for Repositories Storing Human Data (Even if De-Identified)

A. *Fidelity to Consent:* Restricts dataset access to appropriate uses consistent with original consent (such as for use only within the context of research on a specific disease or condition).

B. *Restricted Use Compliant:* Enforces submitters' data use restrictions, such as preventing reidentification or redistribution to unauthorized users.

C. *Privacy:* Implements and provides documentation of security techniques appropriate for human subjects' data to protect from inappropriate access.

D. *Plan for Breach:* Has security measures that include a data breach response plan.

E. *Download Control:* Controls and audits access to and download of datasets.

F. *Clear Use Guidance:* Provides accompanying documentation describing restrictions on dataset access and use.

G. *Retention Guidelines:* Provides documentation on its guidelines for data retention.

H. *Violations:* Has plans for addressing violations of terms-of-use by users and data mismanagement by the repository.

I. *Request Review:* Has an established data access review or oversight group responsible for reviewing data use requests.

Sean C. Bonyun,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 2020–00689 Filed 1–16–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87948; File No. SR–IEX–2020–01]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct Three Typographical Errors in IEX Rules 11.190(e) and 11.220(a)(7)

January 13, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on (date), the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to correct three typographical errors in IEX Rules 11.190(e) and 11.220(a)(7). The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently filed a proposed rule change to amend, in part, IEX Rules 11.190(e) and Rule 11.220(a)(7) related to the Exchange's anti-internalization functionality (the ''Original Filing'').[8] The Original Filing introduced two typographical errors in IEX Rule 11.190(e) and one typographical error in IEX Rule 11.220(a)(7), which the Exchange proposes to correct as described below.

First, the Exchange proposes to add the number ''2'' in IEX Rule 11.190(e) to denote a numbered subparagraph between subparagraphs (1) and (3). The Original Filing inadvertently deleted the number ''2'' to denote the applicable subparagraph.

Second, the Exchange proposes to delete the word ''modifier'' from the first sentence of IEX Rule 11.190(e)(3). The Original Filing inadvertently did not mark the word for deletion as intended.

Third, the Exchange proposes to modify the first sentence of Rule 11.220(a)(7), in which a deletion bracket and the preceding letter were inadvertently underlined in the Original Filing. The Exchange thus proposes to delete the deletion bracket and preceding letter as intended.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [9] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, IEX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [11] because it will eliminate any confusion regarding IEX rules by correcting inadvertent typographical errors introduced by the Original Filing in IEX Rules 11.190(e)(2) and 11.220(a)(7) without changing the substance of such rule provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to correct inadvertent typographical errors, thereby eliminating any potential confusion regarding such rule provisions without changing their substance.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] *See* Securities Exchange Act Release No. 87798 (December 18, 2019), 84 FR 71053 (December 26, 2019) (SR–IEX–2019–14).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(6) [13] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has represented that it would like to implement the proposed rule changes on the same schedule as the Original Filing to avoid any potential confusion. The proposed rule change only corrects non-substantive typographical errors in the Exchange's recently adopted rule and thus does not raise any new or novel issues. Accordingly, the Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2020–01 and should be submitted on or before February 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00682 Filed 1–16–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a telephonic meeting on Friday, January 24, 2020.

PLACE: The meeting will be open to the public *via* telephone at 1–844–721–7239 in the United States or (409) 207–6953 outside the United States, participant code 4443950.

STATUS: This meeting will begin at 11:30 a.m. (ET) and conclude at 1:15 p.m. and will be open to the public *via* telephone. The meeting will be webcast by audio-only on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On December 31, 2019, the Commission issued notice of the Committee meeting (Release No. 33–10739), indicating that the meeting is open to the public *via* telephone, and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting.

The agenda for the meeting includes: Welcome remarks; a discussion of the SEC's proxy voting advice and Rule 14a–8 proposed rulemakings (which may include a recommendation from the Investor as Owner Subcommittee); and a discussion of exchange rebate tier disclosure (which may include a

recommendation of the Market Structure Subcommittee).

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: January 14, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–00799 Filed 1–15–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87952; File No. SR–NYSE–2019–73]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Extend a Waiver of New Firm Application Fees for Certain Applications and of Bond Trading License Fees and To Discontinue the Liquidity Provider Incentive Program and the Agency Order Rebate Program

January 13, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 31, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) extend a fee waiver for new firm application fees for applicants seeking only to obtain a bond trading license (''BTL'') for 2020; (2) waive the BTL fee for 2020; and (3) discontinue the Liquidity Provider Incentive Program and the Agency Order Rebate Program. The Exchange proposes to implement the fee changes effective January 2, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) extend a fee waiver for new firm application fees for applicants seeking only to obtain a BTL for 2020; (2) waive the BTL fee for 2020; [4] and (3) discontinue the Liquidity Provider Incentive Program and the Agency Order Rebate Program. The Exchange proposes to implement the fee changes effective January 2, 2020.

The Exchange currently charges a New Firm Fee ranging from $2,500 to $20,000, depending on the type of firm, which is charged per application for any broker-dealer that applies to be approved as an Exchange member organization. The Exchange proposes to amend the Price List to waive the New Firm Fee for 2020 for new member organization applicants that are seeking only to obtain a BTL and not trade equities at the Exchange. The proposed waiver of the New Firm Fee would be available only to applicants seeking approval as a new member organization, including carrying firms, introducing firms, or non-public organizations, which would be seeking to obtain a BTL at the Exchange and not trade equities. Further, if a new firm that is approved as a member organization and has had the New Firm Fee waived converts a BTL to a full trading license within one year of approval, the New Firm Fee would be charged in full retroactively. The Exchange believes that charging the New Firm Fee retroactively within a year of approval is appropriate because it would discourage applicants to claim that they are applying for a BTL solely to avoid New Firm Fees.

Additionally, the Exchange currently charges a BTL fee of $1,000 per year. The Exchange proposes to amend the Price List to waive the BTL fee for 2020 for all member organizations.

The Exchange believes that the proposed fee changes would provide increased incentives for bond trading firms that are not currently Exchange member organizations to apply for Exchange membership and a BTL. The Exchange believes that having more member organizations trading on the Exchange's bond platform would benefit investors through the additional display of liquidity and increased execution opportunities in Exchange-traded bonds at the Exchange.

The Exchange proposes to discontinue the Liquidity Provider Incentive Program and the Agency Order Rebate Program because both programs are underutilized by member organizations. The Liquidity Provider Incentive Program, a voluntary rebate program, was adopted by the Exchange in 2016.[5] Pursuant to the program, the Exchange pays Users [6] of NYSE Bonds a monthly [sic], tiered rebate provided Users who opt into the program meet specified quoting requirements. Under the program, the rebate payable is based on the number of CUSIPs [7] a User quotes. The Agency Order Rebate Program was adopted by the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed to adopt the fee waiver and waive the BTL fee in 2015. *See* Securities Exchange Act Release No. 74031 (January 12, 2015), 80 FR 2462 (January 16, 2015) (SR–NYSE–2014–78). The Exchange has filed to extend the fee waiver and waive the BTL fee for each calendar year since 2017. *See* Securities Exchange Act Release Nos. 79710 (December 29, 2016), 82 FR 1395 (January 5, 2017) (SR–NYSE–2016–89); 82418 (December 28, 2017), 83 FR 568 (January 4, 2018) (SR–NYSE–2017–70); and 84899 (December 20, 2018), 83 FR 67395 (December 28, 2018) (SR–NYSE–2018–65).

[5] *See* Securities Exchange Act Release No. 77591 (April 12, 2016), 81 FR 22656 (April 18, 2016) (SR–NYSE–2016–26). *See also* Securities Exchange Act Release Nos. 77812 (May 11, 2016), 81 FR 30594 (May 17, 2016) (SR–NYSE–2016–34); 78108 (June 21, 2016), 81 FR 41636 (June 27, 2016) (SR–NYSE–2016–42); 79210 (November 1, 2016), 81 FR 78213 (November 7, 2016) (SR–NYSE–2016–68); 80934 (June 15, 2017), 82 FR 28173 (June 20, 2017) (SR–NYSE–2017–27); and 84100 (September 12, 2018), 83 FR 47230 (September 18, 2018) (SR–NYSE–2018–39).

[6] Rule 86(b)(2)(I) defines a User as any Member or Member Organization, Sponsored Participant, or Authorized Trader that is authorized to access NYSE Bonds.

[7] CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments, including: Stocks of all registered U.S. and Canadian companies, commercial paper, and U.S. government and municipal bonds. The CUSIP system—owned by the American Bankers Association and managed by Standard & Poor's—facilitates the clearance and settlement process of securities. *See https://www.sec.gov/answers/cusip.htm.*

in 2017.[8] Pursuant to the program, the Exchange pays a monthly rebate to a User that submits an average of 400 resting limit orders of any size per trading day [9] during the month and that are submitted as Agency Orders [10] by the User. The Exchange proposes to remove both the Liquidity Provider Incentive Program and the Agency Order Rebate Program from the Price List.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable to waive the New Firm Fee and the annual BTL fee for 2020 to provide an incentive for bond trading firms to apply for Exchange membership and a BTL. The Exchange believes that providing an incentive for bond trading firms that are not currently Exchange member organizations to apply for membership and a BTL would encourage market participants to become members of the Exchange and bring additional liquidity to a transparent bond market. To the extent the existing New Firm Fees or the BTL fee serves as a disincentive for bond trading firms to become Exchange member organizations, the Exchange believes that the proposed fee change could expand the number of firms eligible to trade bonds on the Exchange. The Exchange believes creating incentives for bond trading firms to trade bonds on the Exchange protects investors and the public interest by increasing the competition and liquidity on a transparent market for bond trading. The proposed waiver of the New Firm Fee and BTL fee is equitable and not unfairly discriminatory because it would be offered to all market participants that wish to trade at the Exchange the narrower class of debt securities only.

The Exchange believes that the proposed rule change to eliminate the Liquidity Provider Incentive Program and the Agency Order Rebate Program from the Price List is reasonable because both programs are underutilized and have generally not incentivized member organizations to bring liquidity and increase trading on the Exchange. Of the 31 member organizations that currently have the ability to trade on NYSE Bonds, only 5 have established connectivity to NYSE Bonds in the past year. Of those 5 members, only one firm participated in the Liquidity Provider Incentive Program, and did so for only a short period of time, from May 2019 through October 2019. With respect to the Agency Order Rebate Program, no member organization ever participated in that program. The Exchange does not anticipate any member organization to participate in either the Liquidity Provider Incentive Program or the Agency Order Rebate Program in the near future. Therefore, the Exchange believes it is reasonable to eliminate both programs. The Exchange believes eliminating underutilized incentive programs would simplify the Price List. The Exchange further believes that removing reference to the incentive programs from the Price List would also add clarity to the Price List. The Exchange believes that eliminating the Liquidity Provider Incentive Program and the Agency Order Rebate Program from the Price List is equitable and not unfairly discriminatory because both programs would be eliminated in their entirety and would no longer be available to any member organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Debt securities typically trade in a decentralized over-the-counter (''OTC'') dealer market that is less liquid and transparent than the equities markets. The Exchange believes that the proposed change would increase competition with these OTC venues by reducing the cost of being approved as and operating as an Exchange member organization that solely trades bonds at the Exchange, which the Exchange believes will enhance market quality through the additional display of liquidity and increased execution opportunities in Exchange-traded bonds at the Exchange. The Exchange believes that elimination of the Liquidity Provider Incentive Program and the Agency Order Rebate Program from the Price List would not affect intramarket competition because both programs have generally not incentivized member organizations to add liquidity or increase trading on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues that are not transparent. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges as well as with alternative trading systems and other venues that are not required to comply with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[8] *See* Securities Exchange Act Release No. 82343 (December 18, 2017), 82 FR 60782 (December 22, 2017) (SR–NYSE–2017–68).

[9] A trading day is any day that NYSE Bonds is available for trading, as determined by Securities Industry and Financial Market Association (''SIFMA''), which annually provides recommendations for early and full market closes that the bond market, including NYSE Bonds, follows. *See* note 8, *supra.*

[10] An Agency Order is any order submitted by a User that it represents as agent on NYSE Bonds. *See* note 8, *supra.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4), (5).

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule–comments@sec.gov.* Please include File No. SR–NYSE–2019–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2019–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2019–73, and should be submitted on or before February 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00684 Filed 1–16–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87953; File No. SR–CBOE–2020–001]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related To Expiring Fee Waivers and Incentive Programs

January 13, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule relating to various fee waivers and incentive programs that are set to expire December 31, 2019. The amendments include proposals to make some waivers permanent as well as proposals to extend or remove others. The Exchange proposes to implement these amendments to its Fees Schedule on January 2, 2020.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule relating to various fee waivers and incentive programs that are set to expire December 31, 2019. The amendments include proposals to make some waivers permanent as well as proposals to extend or remove others. The Exchange proposes to implement these amendments to its Fees Schedule on January 2, 2020.

Sector Indexes Facilitation Fee

First, the Exchange proposes to permanently waive fees for facilitation orders in Sector Index options,[3] thereby continuing to assess a fee of $0.00 for all qualifying orders. Currently, Footnote 11 of the Fees Schedule provides that for facilitation orders for Sector Index options executed in open outcry the Exchange will assess no Clearing Trading Permit Holder Proprietary transaction fees through December 31, 2019. By way of background, ''facilitation orders'' in open outcry are defined as any order in which a Clearing Trading Permit Holder (''F'' capacity code) or Non-Trading Permit Holder Affiliate (''L'' capacity code) is contra to any other capacity code order, provided the same executing broker and clearing firm are on both sides of the transaction.[4] In adopting a waiver for facilitation fees in Sector Index options,[5] the Exchange recognized that Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity. As such, the Exchange believes that continuing to encourage the important role Clearing Trading

[3] *See* Cboe Options Fees Schedule, Footnote 47.

[4] *See* Cboe Options Fees Schedule, Footnote 11.

[5] *See* Securities Exchange Act Release No. 85167 (February 20, 2019), 84 FR 6039 (February 25, 2019) (SR–CBOE–2019–011).

Permit Holders play with respect to facilitating their own customers' trading activity will continue to add transparency to the markets and promote price discovery to the benefit of all market participants. Therefore, the Exchange proposes to permanently waive fees for facilitation of orders in open outcry in Sector Index options permanent [sic], and thereby would continue to assess $0.00 for such orders.

Sector Indexes License Surcharge

The Exchange next proposes to permanently waive the Index License Surcharge of $0.10 per contract, thereby continuing to assess an Index License Surcharge fee of $0.00 for transactions in Sector Index options. In order to promote and encourage trading of the Sector Index options, listed in 2018, the Exchange adopted a waiver of the Index License Surcharge for non-customer Sector Index option transactions.[6] The waiver has since been extended and is currently set to expire on December 31, 2019.[7] Because the volume in these products has remained on the lower side since their listing, the Exchange wishes to continuously assess a surcharge of $0.00 for transactions in Sector Index options, instead of continuing to extend each waiver upon expiration, to indefinitely incentivize the trading of Sector Index options and continue to grow the products. The $0.00 surcharge would continue to apply to all non-customer transactions, as it does with the current waiver.

VIX License Index Surcharge

The Exchange next proposes to permanently waive the Index License Surcharge of $0.10 per contract for Clearing Trading Permit Holder Proprietary (''Firm'') (capacity codes ''F'' or ''L'') VIX orders that have a premium of $0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange adopted the waiver in 2016[8] to reduce transaction costs on expiring, low-priced VIX options, which the Exchange believed would encourage Firms to seek to close and/or roll over such positions close to expiration at low premium levels, including facilitating customers to do so, in order to free up capital and encourage additional trading.[9] Since its adoption, the Exchange has continued to extend the waiver, which is currently set to expire on December 31, 2019,[10] at which time the Exchange had stated that it would evaluate whether the waiver has in fact prompted Firms to close and roll over these positions close to expiration as intended. The Exchange has determined that the waiver has incentivized, and continues to incentivize, Firms to close and/or roll over such positions close to expiration at low premium levels, as well as facilitate customers to do the same. The Exchange believes that if such a waiver was not in place, and Firms were charged standard costs to roll or exit positions close to expiration at low premium levels, the closing transactions and positions currently and consistently taken by Firms would not occur. Accordingly, the Exchange proposes to permanently waive this fee, and thereby continue to assess an Index License Surcharge of $0.00 per contract for Firm VIX orders that have a premium of $0.10 or lower and have series with an expiration of seven (7) calendar days or less.

RLG, RLV, RUI, and UKXM Transaction Fees

In order to promote and encourage trading in certain FTSE Russell Index products (*i.e.,* Russell 1000 Growth Index (''RLG''), Russell 1000 Value Index (''RLV''), Russell 1000 Index (''RUI''), and FTSE 100 Index (''UKXM'')), the Exchange adopted waivers (in 2015 and then in 2016)[11] of all transaction fees (including the Floor Brokerage Fee, Index License Surcharge and CFLEX Surcharge Fee) for each of these products for all market participants.[12] Since its adoption, the Exchange has continued to extend the waiver, which is currently set to expire on December 31, 2019.[13] Like with the Sector Indexes License Surcharge above, because the volume in these products is consistently low, the Exchange now proposes to continuously assess a fee of $0.00 for transactions in such products, as opposed to extending the waiver every six months. As such, the Exchange proposes to permanently waive transaction fees for orders in RLG, RLV, RUI, and UKXM options in order to continue to encourage growth and trading of these products.

MXEA and MXEF LMM Incentive Program

The Exchange also proposes to extend the financial program for Lead Market-Makers (''LMMs'') appointed in MSCI EAFE Index (''MXEA'') options and MSCI Emerging Markets Index (''MXEF'') options.[14] Currently, if the appointed LMM in MXEA and MXEF provides continuous electronic quotes during Regular Trading Hours that meet or exceed the above heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a payment for that month in the amount of $20,000 per class, per month. The Fees Schedule currently provides that this program will be in place through December 31, 2019. In order to continue to encourage LMM(s) in MXEA and MXEF to continue serving as LMMs and provide significant liquidity in these options, which, in turn, would continue to provide greater trading opportunities for all market participants, the Exchange proposes to renew this program through June 30, 2020.

UKXM DPM Incentive Program

The Exchange currently has a compensation plan in place for the Designated Primary Market-Maker(s) (''DPM(s)'') appointed in UKXM to offset its DPM costs, which is set to expire on December 31, 2019.[15] Specifically, the DPM appointed for an entire month in UKXM will receive a payment of $5,000 per month through December 31, 2019.[16] The Exchange notes that DPMs incur costs when receiving an appointment, and this compensation plan is designed to offset those costs in order to encourage DPMs to continue to serve as a DPM in this product. The Exchange notes that there is low volume in UKXM and, as such, the Exchange proposes to extend this plan through December 31, 2020 to continue to incentivize DPMs to uphold its DPM commitments in this product, thereby continuing to provide the necessary liquidity and, as a result, greater trading opportunities for all market participants in this option class.

[6] *See* Securities Exchange Act Release No. 82854 (March 12, 2018), 83 FR 11803 (March 16, 2018) (SR–CBOE–2018–012). The Exchange notes that this surcharge does not apply to customer orders.

[7] *See supra* note 6 [sic].

[8] *See* Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR–CBOE–2016–002).

[9] *See* Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR–CBOE–2016–002).

[10] *See supra* note 6 [sic].

[11] *See* Securities Exchange Act Release No. 76288 (October 28, 2015), 80 FR 67805 (November 3, 2015) (SR–CBOE–2015–096) (adopting fee waivers for RUI, RLV, and RLG transactions); 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR–CBOE–2016–021) (adopting waivers for UKXM and FXTM transactions).

[12] *See* Cboe Options Fees Schedule, Footnote 40.

[13] *See supra* note 6 [sic].

[14] *See* Cboe Options Fees Schedule, ''MSCI LMM Incentive Program'' Table; *and* Securities Exchange Act Release No. 83585 (July 2, 2018), 83 FR 31825 (July 9, 2018) (SR–CBOE–2018–050); *see also supra* note 6 [sic].

[15] *See* Securities Exchange Act Release No. 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR–CBOE–2016–021).

[16] *See* Cboe Options Fees Schedule, Footnote 43.

MXEF Customer Transactions Fee Waiver

Lastly, the Exchange proposes to remove the current waiver of the $0.25 fee assessed for Customer (''C'') transactions in MXEF upon its expiration on December 31, 2019.[17] The Exchange adopted this waiver in October 2019 in order to incentivize an increase of Customer volume in MXEF on the Exchange as a result of a precipitous decrease in MXEF Customer volume in the months leading up to October 2019. The Exchange has determined that there has since been a revived increase in Customer executions in MXEF, therefore, the Exchange proposes to let this waiver expire upon December 31, 2019 and remove it from the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[20] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Sector Indexes Facilitation Fee

The Exchange believes that the proposal to permanently waive the Clearing Trading Permit Holder Proprietary transaction fee for facilitation orders in open outcry in Sector Index options is reasonable because these orders will continue to not be charged any fee. As stated above, the Exchange believes this waiver is, and will continue to be, a reasonable means to incentivize the facilitation of customer orders by Clearing Trading Permit Holders, an important source of liquidity. This, in turn, adds to market transparency and promotes price discovery to the benefit of all market participants. The Exchange believes that this is equitable and not unfairly discriminatory because a similar fee of no charge already applies to Firm manual orders in Sector Index options as well as in other products.[21] Moreover, The Exchange believes that continuing to assess no charge for Firm facilitation orders in open outcry in Sector Index options is equitable and not unfairly discriminatory because Clearing Trading Permit Holders have obligations which normally do not apply to other market participants (*e.g.,* must have higher capital requirements, clear trades for other market participants, and must be members of OCC).

Sector Indexes License Surcharge

The Exchange believes it is reasonable to permanently waive the Index License Surcharge for Sector Indexes because the Sector Indexes have continued to experience lower volume and are still relatively new products and the Exchange wishes to continuously encourage and promote trading of these products. Therefore, the Exchange believes that consistently and more definitively assessing no surcharge for non-customer orders, as opposed to repeatedly extending the fee waiver, is a reasonable means to continue to encourage market participants to trade these products. The Exchange also believes that the proposal to permanently waive the Index License Surcharge for non-customer transactions in Sector Index options is equitable and not unfairly discriminatory because all market participants would equally continue to be assessed a surcharge of $0.00 for transactions in Sector Indexes (the Exchange notes that customer orders are not subject to this surcharge).

VIX Index License Surcharge

The Exchange believes it is reasonable to waive the Index License Surcharge for Clearing Trading Permit Holder Proprietary VIX orders that have a premium of $0.10 or lower and have series with an expiration of seven calendar days or less, because the Exchange believes the current waiver has incentivized Firms to roll and close over positions close to expiration at low premium levels. Therefore, the proposal to remove the waiver and continue to assess a fee of $0.00 for such transactions would serve to consistently encourage Firms to transact and/or take positions close to expiration at low premium levels. Particularly, the Exchange believes it is reasonable to make permanent the waiver of the $0.10 per contract surcharge by consistently assessing no surcharge because Firms would be less likely to engage in these transactions, as opposed to other VIX transactions, due to the associated transaction costs. The Exchange believes that it is equitable and not unfairly discriminatory to limit the $0.00 surcharge to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of VIX customer orders with a premium of $0.10 or lower and series with an expiration of seven calendar days or less. Additionally, as noted above, Clearing Trading Permit Holders have obligations, which normally do not apply to other market participants (*e.g.,* must have higher capital requirements, clear trades for other market participants, must be members of OCC).

RLG, RLV, RUI, and UKXM Transaction Fees

The Exchange believes it is reasonable to permanently waive all transaction fees for RLG, RLV, RUI, and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee, and consistently assess a fee of $0.00, because the waiver of the respective fees currently in place and has continuously been extended since its adoption. Thus, permanently waiving these transaction fees would better serve to consistently promote and encourage trading of these products which have experienced relatively low volume since their listing. The proposal to make this waiver permanent is not unfairly discriminatory and is equitable because it would result in an equal assessment of no charge for any market participant's orders in RLG, RLV, RUI, and UKXM.

MXEA and MXEF LLM Incentive Program

The Exchange believes it is reasonable to extend the MXEA and MXEF LMM Incentive Program because the Exchange wants to ensure it continues incentivizing the LMM(s) in these products to provide liquid and active markets in these products to encourage its growth. The Exchange notes that without the proposed financial

[17] *See* Securities Exchange Release No. 87249 (October 8, 2019), 84 FR 55203 (October 15, 2019) (SR–CBOE–2019–076).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(4).

[21] *See* Cboe Fees Schedule, ''Rate Table—Underlying Symbol List A'', which currently assesses a fee of $0.00 for Firm orders in RLG, RLV, RUI, and UKXM options.

incentive, there may not be sufficient incentive for TPHs to undertake an obligation to quote at heightened levels, which could result in lower levels of liquidity to the detriment of all market participants. The Exchange believes the waiver is equitable and not unfairly discriminatory to only offer this financial incentive to MXEA and MXEF LMM(s), because it benefits all market participants trading in these options to encourage the LMM(s) to satisfy the heightened quoting standard, in turn, increasing liquidity and providing more trading opportunities and tighter spreads. Indeed, the Exchange notes that LMMs provide a crucial role in providing quotes and the opportunity for market participants to trade products, including MXEA and MXEF, which can lead to increased volume, thereby providing for a robust market. In addition, the Exchange notes that all Market-Maker types (*i.e.* LMMs, DPMs, as well as Primary Market-Makers (''PMMs'') take on a number of obligations, including quoting obligations, that other market participants do not have. Such Market-Makers have added market-making and regulatory requirements, which normally do not apply to other market participants. For example, Market-Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Also, if a MSCI LMM does not satisfy the heightened quoting standard, then it simply will not receive the offered per class payment for that month.

UKXM DPM Incentive Program

The Exchange believes that the proposed extension of the UKXM DPM incentive program is reasonable because it will continue to incentivize the DPM(s) to serve as a DPM(s) in this product. Continued DPM commitments in UKXM would continue to provide the necessary liquidity in this product, resulting in tighter spreads and increased trading opportunities for all market participants in this option class. The Exchange believes that the extension of this incentive program is equitable and not unfairly discriminatory, because it will apply equally to all DPMs appointed in UKXM. Like LMMs (as indicated above), DPMs play a crucial role in providing liquid and active markets in options classes in order to encourage growth and provide trading opportunities to the benefit all market participants, and uphold certain obligations and adhere to certain regulatory requirements that other market participants do not have.

MXEF Customer Transactions Fee Waiver

Finally, the Exchange believes it is reasonable to remove the waiver of transaction fees for Customer orders in MXEF as it will expire on December 31, 2019. As the waiver was implemented in order to incentivize Customer MXEF executions following a noticeable decrease in Customer volume in MXEF, and the Exchange has determined that Customer executions in MXEF have increased since the application of the waiver, the Exchange believes it is reasonable to let the waiver expire as scheduled and remove it from the Fees Schedule. The proposed removal of the waiver is not unfairly discriminatory and is equitable because the waiver will no longer be applicable, as scheduled, to any orders in MXEF. Instead, the standard fee of $0.25 that applied to such transactions prior to the adoption of the waiver, will again apply equally to all Customer orders in MXEF.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes either make permanent or extend existing fee waivers and incentive programs that already apply to all similarly situated TPHs in a uniform manner. Also, the proposed change to remove an existing fee waiver does not impose any burden on intramarket competition, as the same fees that applied prior to the implementation of the waiver will continue to apply after its removal. To the extent certain market participants receive a benefit that others do not, these different market participants have different obligations and circumstances. For example, DPMs and LMMs play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. Additionally, Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity and also have other obligations, which normally do not apply to other market participants (*e.g.,* must have higher capital requirements, clear trades for other market participants, must be members of OCC). The Exchange also notes that consistently and definitively assessing no charge (in lieu of continuously extending the relevant waivers) and that the proposed extensions of the incentive programs are designed to attract additional order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and tighter spreads and encourages all TPHs to send orders, thereby contributing to robust levels of liquidity.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the proposed changes only affect trading on Cboe Options, as the waivers and incentive programs apply to transactions in products exclusively listed on Cboe Options. Next, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 options exchanges, as well as off-exchange venues. Based on publicly available information, no single options exchange has more than 22% of the market share of executed volume of options trades.[22] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes

[22] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (December 17, 2019), available at *http://markets.cboe.com/us/options/market_share/*.

[23] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . ''.[24] Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and paragraph (f) of Rule 19b–4[26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number *SR–CBOE–2020–001* 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–CBOE–2020–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–001 and should be submitted on or before February 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00685 Filed 1–16–20; 8:45 am]

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[24] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87956; File No. 265–30]

Fixed Income Market Structure Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on Monday, February 10, 2020 in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will begin at 9:30 a.m. (ET) and will be open to the public. The meeting will be webcast on the Commission's website at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact persons listed below. The public is invited to submit written statements to the Committee. The meeting will include panel discussions and potential recommendations from the Municipal Securities Transparency, Credit Ratings, and Technology and Electronic Trading subcommittees.

DATES: The public meeting will be held on February 10, 2020. Written statements should be received on or before February 3, 2020.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–30 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Vanessa A. Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–30. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Commission's internet website at *http://www.sec.gov/comments/265-30/265-30.shtml.*

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: David Dimitrious, Senior Special Counsel, at (202) 551–5131, or Arisa Kettig, Special Counsel, at (202) 551–5676, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549–7010.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Brett Redfearn, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: January 13, 2020.

Vanessa A. Countryman,

Committee Management Officer.

[FR Doc. 2020–00696 Filed 1–16–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87946; File No. SR–CboeBZX–2020–001]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fee Schedule

January 13, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''BZX Options''), effective January 2, 2020.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 22% of the market share and currently the Exchange represents less than 8% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fees Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard rebate of $0.29 per contract for Market Maker orders that add liquidity in Penny Pilot Securities[4] and $0.40 per contract for such orders in non-Penny Pilot Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers nine Market Maker Penny Pilot Add Volume Tiers (''MM Penny Add Tiers'') under footnote 6, which provide an enhanced rebate between $0.33 and $0.46 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code PM.

Under the current MM Penny Add Tiers, a Member receives an enhanced rebate where the Member has an ADV, ADAV, or ADRV (depending on the Tier)[5] in Market Maker orders greater than or equal to a specified percentage of OCV[6] or TCV[7] (currently in Tier 4).

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary by Month (December 26, 2019), available at *https://markets.cboe.com/us/options/market_statistics/*.

[4] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[5] ''ADAV'' means average daily added volume calculated as the number of contracts added, ''ADRV'' means average daily removed volume calculated as the number of contracts removed, and ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day. ADAV, ADRV and ADV are calculated on a monthly basis.

[6] ''OCC Customer Volume'' or ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[7] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

The Exchange proposes to adopt new MM Penny Add Tier 9 and, accordingly, relocate current MM Penny Add Tier 9 to a new Tier 10. The Exchange believes the proposed MM Penny Add Tier will provide Members an additional opportunity and alternative means to receive an enhanced rebate for meeting the corresponding proposed criteria. The Exchange believes the proposed tier, along with the existing tiers, also provides an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher discounts for such transactions. Specifically, the Exchange proposes to adopt a new MM Penny Add Tier 9 (and subsequently move current Tier 9 to a new Tier 10), which would provide an enhanced rebate of $0.44 per contract where a Member: (1) Has an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV; (2) has on BZX Equities an ADV greater than or equal to 0.60% of average TCV; and (3) has a step-up ADAV in Market Maker orders from December 2019 greater than or equal to 0.05% of average OCV. As such, under the proposed Tier, the Exchange is adopting an additional set of criteria that Members could meet to achieve an enhanced rebate. Particularly, Members must additionally satisfy a (i) ADAV threshold as it relates to a percentage of OCV, that is less stringent than such criteria under current Tier 9 (relocated to new Tier 10), (ii) cross-asset threshold, which is designed to incentivize Members to achieve certain levels of participation on both the Exchange's options and equities platform (''BZX Equities'') and (iii) a step-up ADAV threshold, which is designed to encourage growth (*i.e.,* Members must increase their relative liquidity each month over a predetermined baseline (in this case the month being December 2019)). Overall, the proposed enhanced rebate and corresponding criteria is designed to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Section 6 of the Act,[8] in general, and Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive higher rebates by providing a different set of criteria they can reach for. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[10] including the Exchange,[11] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis. They also provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including pricing incentives tied to comparable tiers.[12]

Moreover, the Exchange believes the proposed Market Maker Tier 9 is a reasonable means to encourage Members to increase their liquidity on the Exchange and also their participation on BZX Equities. The Exchange believes that adopting a tier with alternative criteria to the existing Market Maker Volume Tiers may encourage those Members who could not previously achieve the criteria under the existing Market Maker Volume Tiers to increase their order flow on BZX Options and Equities. For example, the proposed tier would provide an opportunity for Members who have an ADAV in Market Makers Orders of at least 0.10% of average OCV, but less than the more stringent 0.75% of average OCV (the requirement under current Tier 9, *i.e.,* new Tier 10), to receive a higher rebate than they may currently receive but slightly lower than the rebate they would receive for reaching the more stringent criteria under current Tier 9 (new Tier 100), if they otherwise meet the threshold requirement based on BZX Equities participation and can grow a modest amount since December 2019. Similarly, for Market Makers that participate on both BZX Options and Equities, and do not currently meet the 0.75% ADAV threshold under current Tier 9 (*i.e.,* new Tier 10), but can or do meet the proposed equities ADV threshold, the proposed tier may incentivize those participants to grow their options volume in order to receive enhanced rebates. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed enhanced rebate is reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed rebate and threshold appropriately reflects the incremental difficulty to achieve the existing Market Maker Volume Tiers. The proposed enhanced rebate amount also does not represent a significant departure from the enhanced rebates currently offered under the Exchange's existing Market Maker Volume Tiers. Indeed, the proposed enhanced rebate amount ($0.44) is incrementally higher than current Tiers 7 and 8 ($0.42), which the Exchange believes offers slightly less stringent criteria than the proposed Tier 9, but is incrementally lower than the rebate offered under existing Tier 9 (*i.e.,* new Tier 10) ($0.46), which the Exchange believes is more stringent than the proposed criteria under proposed Tier 9. The Exchange also notes that the proposed rebate remains within the range of the enhanced rebates offered under the current Market Maker Volume Tiers (*i.e.,* $0.33–$0.46).

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers. Additionally a number of Market Makers have a reasonable opportunity to satisfy the tier's criteria, which the Exchange believes is less stringent than the existing Market Maker Volume Tier 9 (new Tier 10). While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See, e.g.,* Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between $0.01 and $0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

[11] *See, e.g.,* Cboe BZX U.S. Options Exchange Fee Schedule, Footnote 7, Market Maker Non-Penny Pilot Volume Tiers which provide comparable enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

[12] *See supra* note 11.

proposed tier, the Exchange anticipates up to three Market Makers meeting, or being reasonably able to meet, the proposed criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on BZX Options and Equities to qualify for the proposed enhanced rebate. To the extent a Member participates on the Exchange but not on BZX Equities, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BZX Equities. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all market participants, which would provide them with access to the benefits on BZX Equities provided by the proposed change, even where a member of BZX Equities is not necessarily eligible for the proposed enhanced rebate on the Exchange.

The Exchange lastly notes that it does not believe the proposed tier will adversely impact any Member's pricing or ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the proposed enhanced rebate, and has nine alternative choices to aim to achieve under the Market Maker Volume Tiers. Furthermore, the proposed enhanced rebate would apply to all Members that meet the required criteria under proposed Market Maker Volume Tier 9.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [13]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies uniformly to market participants. As discussed above, to the extent a Member participates on the Exchange but not on BZX Equities, the Exchange notes that the proposed change can provide an overall benefit to the Exchange resulting from the success of BZX Equities. Such success enables the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all market participants. Additionally, the proposed change is designed to attract additional order flow to the Exchange and BZX Equities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participant.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 22% of the market share.[14] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[16] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings

[13] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[14] *See supra* note 1.

[15] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–001 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–CboeBZX–2020–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–001 and should be submitted on or before February 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00681 Filed 1–16–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87951; File No. SR–CboeBZX–2019–076]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Clearbridge Small Cap Value ETF Under BZX Rule 14.11(k)

January 13, 2020.

On September 26, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Clearbridge Small Cap Value ETF (''Fund'') under BZX Rule 14.11(k) (Managed Portfolio Shares). On October 9, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 17, 2019.[3] On November 21, 2019, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Summary of the Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1[7]

The Exchange proposes to list and trade Shares of the Fund under BZX Rule 14.11(k).[8] The Shares will be issued by Precidian ETF Trust II (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[9] The investment adviser to the Trust will be Precidian Funds LLC (''Adviser'') and the sub-adviser to the Fund will be ClearBridge Investments, LLC (''Sub-Adviser'').[10] Legg Mason Investor Services, LLC will serve as the distributor of the Shares.

A. Description of the Fund

The Exchange states that the Fund seeks long-term capital growth. The Exchange states that Fund's holdings will be limited to and consistent with what is permissible under the Exemptive Order and described in the Notice. Under Normal Market Conditions,[11] the Fund will invest at

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87286 (October 10, 2019), 84 FR 55608 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87581, 84 FR 65434 (November 27, 2019). The Commission designated January 15, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] For a complete description of the Exchange's proposal, *see* the Notice, *supra* note 3.

[8] The Commission recently approved the Exchange's proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares. *See* Securities Exchange Act Release No. 87759 (December 16, 2019), 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047).

[9] According to the Exchange, the Trust is registered under the Investment Company Act of 1940 (''1940 Act'') and plans to file a registration statement on Form N–1A relating to the Fund. An order granting exemptive relief to the Trust was issued on May 20, 2019 (File No. 812–14405) (''Exemptive Order''). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[10] The Exchange states that the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Exchange states that the Sub-Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition of and/or changes to the Fund's portfolio and Creation Basket (as such term is defined in BZX Rule 14.11(k). The Exchange further states that in the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio and the Creation Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or Creation Basket.

[11] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of

Continued

least 80% of its net assets, plus borrowings for investment purposes, in U.S. exchange-listed common stocks and other equity securities of small capitalization U.S. companies or in other U.S. exchange-listed investments with similar economic characteristics, including only the following U.S. exchange-listed securities: Common stocks, preferred securities, securities of other investment companies and of real estate investment companies (''REITs''), and warrants and rights.

In addition, the Fund may also invest up to 20% of its net assets, plus borrowings for investment purposes, in common stocks, preferred securities, and warrants and rights of U.S. exchange-listed companies with larger market capitalizations, U.S. ETFs,[12] U.S. exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash without limitation.

B. Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance. The Exchange states that the Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity. In any event, the Fund will not purchase any securities that are illiquid investments at the time of purchase.

The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(k). The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

The Exchange states that the Fund's holdings will also meet the generic listing standards applicable to series of Managed Fund Shares under BZX Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Managed Portfolio Shares, the Exchange believes that the overarching policy issues related to liquidity, market capitalization, diversity, and concentration of portfolio holdings that BZX Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Managed Portfolio Shares.

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2019–076 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [13] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[14] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [15]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[16]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 7, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 21, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[17] and any other issues raised by the proposed rule change under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Fund under BZX Rule 14.11(k) (Managed Portfolio Shares), which are actively managed exchange-traded products for which the portfolio holdings are disclosed on a quarterly, rather than daily, basis, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Exchange Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–076 on the subject line.

trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] For purposes of describing the holdings of the Fund, ETFs include Portfolio Depository Receipts (as described in BZX Rule 14.11(b)); Index Fund Shares (as described in BZX Rule 14.11(c)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs in which the Fund may invest all will be listed and traded on U.S. national securities exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] *Id.*

[15] 15 U.S.C. 78f(b)(5).

[16] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[17] *See supra* note 3.

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–CboeBZX–2019–076. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–076 and should be submitted on or before February 7, 2020. Rebuttal comments should be submitted by February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00683 Filed 1–16–20; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/71–0393 issued to Champlain Capital Partners, L.P. said license is hereby declared null and void.

United States Small Business Administration.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–00755 Filed 1–16–20; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0484 issued to Trinity Capital Fund III, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 10, 2020.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–00758 Filed 1–16–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0468 issued to Trinity Capital Fund II, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 10, 2020.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–00757 Filed 1–16–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16202 and #16203; SOUTH DAKOTA Disaster Number SD–00098]

Presidential Declaration Amendment of a Major Disaster for the State of South Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4469–DR), dated 11/18/2019.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 09/09/2019 through 09/26/2019.

DATES: Issued on 01/10/2020.

Physical Loan Application Deadline Date: 01/31/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 08/18/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of South Dakota, dated 11/18/2019, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/31/2020.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–00705 Filed 1–16–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11003]

30-Day Notice of Proposed Information Collection: Employee Self-Certification and Ability To Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to February 18, 2020.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to: Karl Field, Medical Director, Office of Medical Clearances, Bureau of Medical Services, 2401 E Street NW, SA–1, Room L–101, Washington, DC 20522–0101, and who may be reached at 202–663–1591 or at *Fieldke@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Employee Self-Certification and Ability to Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form.
- *OMB Control Number:* 1405–0224.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Medical Services; MED/CP/CL.
- *Form Number:* DS–6570.
- *Respondents:* Contractors deploying to ESCAPE Diplomatic Missions requesting access to the Department of State Medical Program (currently Iraq, Afghanistan, Yemen, Syria, Libya, Somalia and Peshawar).
- *Estimated Number of Respondents:* 1,900.
- *Estimated Number of Responses:* 1,900.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 950 hours.
- *Frequency:* Annually for those deployed to an ESCAPE post.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS–6570 is completed by an individual and their medical provider to declare that the individual has health concerns that may represent a safety hazard for the individual or others at an ESCAPE Diplomatic Mission. ESCAPE is an acronym used to describe Diplomatic Missions overseas that are in extremely high threat, potentially combat, areas. Current ESCAPE Missions are Iraq, Afghanistan, Somalia, Libya, Yemen, Syria and Peshawar, Pakistan. This program is authorized under the Foreign Service Act of 1980, as implemented by the Department in 13 FAM 301.4–5.

Methodology

The respondent will obtain the DS–6570 from his or her human resources representative, or will download the form from a Department website. The respondent will complete and submit the form offline.

Karl Field,

Director of Medical Clearances.

[FR Doc. 2020–00763 Filed 1–16–20; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice:11006]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Vida Americana: Mexican Muralists Remake American Art, 1925–1945'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Vida Americana: Mexican Muralists Remake American Art, 1925–1945,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Whitney Museum of American Art, New York, New York, from on or about February 17, 2020, until on or about May 17, 2020; at the McNay Art Museum, San Antonio, Texas, from on or about June 25, 2020, until on or about October 4, 2020; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–00868 Filed 1–16–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–80]

Petition for Exemption; Summary of Petition Received; Pyka Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 6, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0948 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 13, 2020.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0948.

Petitioner: Pyka Inc.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) & (2); 91.417(a) & (b); 137.19(c), (d), (e)(2)(ii), (e)(2)(iii), & (e)(2)(v); 137.31; 137.33; 137.41(c); & 137.42.

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner relief for operations under § 44807 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) to operate its proprietary P–400b fixed-wing unmanned aircraft system, with a maximum takeoff weight of 600 pounds, for aerial agricultural spraying operations in remote rural operating environments in the United States.

[FR Doc. 2020–00767 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–78]

Petition for Exemption; Summary of Petition Received; Moose Aye Bye LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 6, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0922 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 13, 2020.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0922.

Petitioner: Moose Aye Bye LLC.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.7(a); 91.113(b); 91.119; 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) & (2); 91.417(a) & (b); 107.35; 107.36; 137.19(c), (d), (e)(2)(ii), (e)(2)(iii), & (e)(2)(v); 137.31; 137.33; 137.41(c); 137.42; & 137.53(c)(2).

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner relief for operations under § 44807 of the Federal Aviation Administration Reauthorization Act of 2018 (Pub. L. 115–254) to conduct commercial agricultural services with a flight of up to five HyLio AG–116 AgroDrone unmanned aircraft systems simultaneously, each with a takeoff weight greater than or equal to fifty-five pounds, at times beyond visual line of sight, and at times from a moving vehicle, over rural privately owned cropland.

[FR Doc. 2020–00768 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Privacy Act of 1974; System of Records

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Rescindment of a system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation is proposing to retire a Department of Transportation system of records titled, ''Department of Transportation/Federal Aviation Administration (DOT/FAA) 813 Civil Aviation Security System of Records.''

DATES: January 17, 2020.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2020–0007. by any of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. Fax: (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2020–0007. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Essie L. Bell, FAA Chief Privacy Officer, Acting, 202. 385.6516, Federal Aviation Administration, 950 L'Enfant Plaza SW, Washington, DC 20024. For privacy issues please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202.527.3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to retire DOT system of records titled, ''Department of Transportation/Federal Aviation Administration (DOT/FAA) 813 Civil Aviation Security System of Records.''

This system was originally established to collect and maintain records on hijacking or attempted hijacking incidents at airports or aboard civil aviation aircraft, information on K–9 assignments to airports, K–9 handler evaluations and information necessary to manage the Federal Air Marshals (FAM).

Following September 11, 2001 Congress passed the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71) which established the Transportation Security Administration (TSA). The ATSA transferred the TSA from the Department of Transportation to the Department of Homeland Security (DHS).

The ATSA transferred responsibility for civil aviation security from the FAA to TSA on February 22, 2002. A Transfer of Function Memo (October 30, 2003) from the FAA Assistant Administrator, Office of Security and Hazardous Materials, to the FAA Freedom of Information Staff and the Director of TSA, Freedom of Information Office, memorializes the transfer of function. The memo evidences that all records maintained in accordance with the DOT/FAA 813 Civil Aviation Security System of Records notice were transferred to the TSA. The FAA kept only duplicate copies of Civil Aviation Security records that related to the terrorist attacks of September 11, 2001, but no longer maintains these copies.

Retiring this FAA system of records notice will have no adverse impact on individuals because the records and functions were transferred from the FAA to TSA.

SYSTEM NAME AND NUMBER:

Department of Transportation/Federal Aviation Administration (DOT/FAA) 813 Civil Aviation Security System of Records

HISTORY:

A full notice of this system of records, DOT/FAA 813 Civil Aviation Security System, was last published in the **Federal Register** on April 11, 2000 (65 FR 19519).

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2020–00670 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 28, 2019

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: The Department is publishing a notice to inform U.S. and certain foreign air carriers of inflation adjustments to liability limits of air carriers and foreign air carriers under the Montreal Convention.

FOR FURTHER INFORMATION CONTACT: Maegan Johnson, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Washington, DC 20590, at *maegan.johnson@dot.gov* or 202–366–9342.

SUPPLEMENTARY INFORMATION: This notice informs U.S. and certain foreign air carriers of inflation adjustments to liability limits of air carriers and foreign air carriers under the Montreal

Convention (Convention).[1] The adjustments affect limits on liability for damages for passenger death or injury, delay in the carriage of passengers, and the loss, delay or damage to baggage or cargo, increasing those limits by nearly 14 percent. This increase became effective on December 28, 2019. The U.S. and foreign air carriers affected by these changes to the Convention include those providing international carriage between countries that, like the United States, are parties to the Convention, and that provide roundtrip foreign air transportation that originates and terminates in the United States.

The liability limits are set out in Articles 21 and 22 of the Convention. Under Article 24 of the Convention, the International Civil Aviation Organization (ICAO) reviews the liability limits in Articles 21 and 22 every five years in light of inflation that has occurred during that period.[2] In a June 28, 2019, notice, the Secretary General of ICAO advised parties to the Convention of revisions required pursuant to this review. The revised liability limits effective December 28, 2019 (stated in Special Drawing Rights (SDRs)) are as follows:[3]

	Strict liability for death or bodily injury to passengers	Delay in the carriage of passengers	Destruction, loss, damage or delay of baggage per passenger	Destruction, loss, damage, or delay of cargo
Limit as of Dec. 28, 2019	128 821 SDRs	5 346 SDRs	1 288 SDRs	22 SDRs.

Pursuant to the terms of Article 24 in the Convention, the increased limits become effective six months following the June 28 notice referred to above, or December 28, 2019. Carriers should, therefore, revise their contracts of carriage, tariffs, required notices, and practices to conform to the Convention's requirements. Failure to implement in a timely manner the revised liability limits and required notices would, in the view of the Department's Office of Aviation Enforcement and Proceedings, constitute an unfair[4] or deceptive[5] practice and unfair method of competition in violation of 49 U.S.C. 41712. This disclosure notice also extends to ticket agents and indirect air carriers.[6]

Issued this 10th day of January, 2020, in Washington, DC.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

[FR Doc. 2020–00713 Filed 1–16–20; 8:45 am]

BILLING CODE 4910–9X–P

[1] *Convention for the Unification of Certain Rules for International Carriage by Air,* done at Montreal on May 28, 1999.

[2] Article 24 of the Convention provides that the limits of liability shall be reviewed by ICAO at five-year intervals and adjusted ''by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision. . . .'' During its second review in 2014, ICAO concluded that it was not necessary to increase liability limits at the time. Thus, the inflation adjustments to the liability limits in Articles 21 and 22 announced in this Notice are the most recent increases since 2009.

[3] The SDR, an international reserve asset, is a defined basket of major currencies periodically reviewed by the International Monetary Fund to reflect the relative importance of the constituent currencies.

[4] We consider a practice to be unfair if it is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

[5] We consider a practice to be deceptive where: (1) A representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and (3) the misleading representation, omission, or practice is material.

[6] Indirect air carrier and foreign indirect air carrier mean a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers and/or foreign direct air carriers. 14 CFR 295.5.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of an information collection titled ''Securities Offering Disclosure Rules.''

DATES: Comments must be submitted on or before March 17, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible.

You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0120, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0120'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection[1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0120'' or ''Securities Offering Disclosure Rules.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

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

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 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, the OCC is publishing notice of the renewal of this collection of information.

Title: Securities Offering Disclosure Rules.

OMB Control No.: 1557–0120.

Type of Review: Regular.

Description: Twelve CFR part 16 governs the offer and sale of securities by national banks and Federal savings associations. The requirements in part 16 enable the OCC to perform its responsibility to ensure that the investing public has information about the condition of the offering institution, the reasons for raising new capital, and the terms of the offering.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 43.

Estimated Annual Burden: 946 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 10, 2020.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–00673 Filed 1–16–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the American Federation of Musicians & Employers Pension Fund (Fund), a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Fund.

DATES: Comments must be received by March 2, 2020.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On December 30, 2019, the Board of Trustees of the Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury

is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Fund's application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: January 13, 2020.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2020–00731 Filed 1–16–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Local 807 Labor-Management Pension Plan (Fund), a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Fund.

DATES: Comments must be received by March 2, 2020.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On December 30, 2019, the Board of Trustees of the Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Fund's application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: January 13, 2020.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2020–00732 Filed 1–16–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on Risk-Sharing Mechanisms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Advisory Committee on Risk-Sharing Mechanisms (ACRSM) will convene a meeting on Wednesday, February 5, 2020, in the Cash Room, Room 2121, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220, from 2:30 p.m.–4:30 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Wednesday, February 5, 2020, from 2:30 p.m.–4:30 p.m. Eastern Time.

ADDRESSES: The ACRSM meeting will be held in Room 2121 (Cash Room), U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/phqvqx* and fill out a secure online registration form. A valid email address will be required to complete online registration. (*Note:* Online registration will close at 5:00 p.m. Eastern Time on Thursday, January 30, 2020.)

2. Contact the Federal Insurance Office at (202) 622–2922, by 5:00 p.m. Eastern Time on Thursday, January 30, 2020, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Mariam G. Harvey, Office of Civil Rights and Diversity, U.S. Department of the Treasury at (202) 622–0316, or *mariam.harvey@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–2922 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the ACRSM are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *acrsm@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Advisory Committee on Risk-Sharing Mechanisms, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the U.S. Department of the Treasury will post all statements on its website *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/advisory-committee-on-risk-sharing-mechanisms-acrsm* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The U.S. Department of the Treasury will also make such statements available for public inspection and copying in the U.S. Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Background: The ACRSM provides advice and recommendations to the Federal Insurance Office (FIO) with respect to the creation and development of non-governmental, private market risk-sharing mechanisms for protection against losses arising from acts of terrorism.

Tentative Agenda/Topics for Discussion: This will be the first ACRSM meeting of 2020. In this meeting, the ACRSM will address, consistent with its charter's mandate, topics related to the role of nongovernmental mechanisms in supporting the terrorism risk insurance market. The ACRSM will receive and discuss updates from its various subcommittees, addressing the financial sharing mechanisms of the Terrorism Risk Insurance Program (TRIP); nuclear, biological, chemical, and radiological risk and its treatment under TRIP; cyber insurance and associated certification issues under TRIP presented by cyber-related losses; and issues related to other risk-sharing mechanisms that engage in some amount of pre-funding of risk exposures.

Dated: January 14, 2020.

J. Tyler Williams,

Deputy Assistant Secretary for Financial Institutions Policy.

[FR Doc. 2020–00735 Filed 1–16–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC, on February 04, 2020 at 8:00 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: January 8, 2020.

Fred Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2020–00334 Filed 1–16–20; 8:45 am]

BILLING CODE 4810–25–M

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meetings

TIME AND DATE: January 27, 2020, from 9:00 a.m. to 5:00 p.m., Central time.

PLACE: Drury Inn & Suites Riverwalk Hotel, 201 N. St. Mary's Street, San Antonio, TX. These meetings will also be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in the open portions of these meetings.

STATUS: These meetings will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board

Subcommittees (each a ''Subcommittee'') will continue their work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of these meetings will include:

Audit Subcommittee Meeting

Proposed Agenda

Portions Open to the Public

I. Call to Order and Roll Call—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 Publication 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 Subcommittee 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 Subcommittee Action

• Minutes from the October 16, 2019 meeting will be reviewed. The Subcommittee will consider action to approve.

V. State Compliance Review Results—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The UCR Depository Manager will review report on key findings from recently completed state compliance reviews. The Subcommittee may act to recommend to the Board corrective actions required by the states in areas deemed not in compliance with UCR policy.

VI. State Audit Performance Standards—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The Depository Manager will review draft state audit performance standards. The Subcommittee may act to recommend adoption to the Board.

VII. Report on 2020 State Compliance Reviews—UCR Depository Manager

The UCR Depository Manager will report on plans for conducting state compliance reviews in 2020 and answer questions.

VIII. Communication Campaigns—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will lead a discussion on the need for UCR to execute carrier solicitations for states currently running limited or no campaigns of their own. Next, the Subcommittee Chair will discuss the need for UCR to execute communications to carriers identified through roadside inspections to be operating in interstate commerce but identified in MCMIS as ''inactive'' or ''intrastate.'' The Subcommittee may act to recommend either or both proposals to the Board.

IX. Potential of Additional Funding for DSL—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will lead a discussion on a proposal for the UCR Board to fund an additional one-half Full Time Equivalent for DSL for the purpose of continuing to process prior year Focused Anomalies Reviews (FARs). The Subcommittee may act to recommend this proposal to the Board.

X. UCR State-Carrier Audit Methodology—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee will consider proposed amendments, related to state carrier audits, for the UCR Agreement and Handbook in order to align both guidance documents with current practice and may act to recommend adoption to the Board.

XI. Report on the Depository Audit for 2017 and 2018—UCR Depository Manager

The UCR Depository Manager will report on results from the 2017 and 2018 Depository audits and answer questions

XII. Report on the Depository Financial Statement Audit for 2019—UCR Depository Manager

The UCR Depository Manager will report on the status of the Depository financial audit and answer questions.

XIII. Report on FARs Results 2018–19—DSL Transportation

The Subcommittee will hear a report on results from the Focused Anomalies Review (FARs) program in 2018 and 2019.

XIV. National Registration System Updates—Seikosoft

The Subcommittee will hear a report on the performance of the NRS, as well as an update on the audit module.

XV. Other Business—Subcommittee Chair

The Subcommittee Chair will call for any other items the subcommittee members would like to discuss.

XVI. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

Finance Subcommittee Meeting

Proposed Agenda

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 Subcommittee Action

The 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 Oct. 16, 2019 Meeting—UCR Operations Manager

For Discussion and Possible Subcommittee Action

Minutes from the October 16, 2019 meeting will be reviewed and the

Subcommittee will consider action to approve.

V. Initial 2020 Distributions to States—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The Subcommittee will review proposed plans for initial distributions to states for the 2020 registration year and reducing excess fees from certain past years by including these sums in the distributions. The Subcommittee may act to recommend adoption of the proposal to the Board.

VI. Certificates of Deposit—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The UCR Depository Manager will provide a report on activities required to redeem certificates of deposit at the Bank of North Dakota scheduled to mature on February 5, 2020 as well as discuss the need to reinvest proceeds from the matured CDs. The Subcommittee may act to recommend adoption of the proposal to the Board.

VII. Board Insurance—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The Subcommittee will hear a report on plans to procure insurance for the UCR Board and Officers (directors and officers, cybersecurity, general liability). The Subcommittee may act to recommend adoption of the proposal to the Board.

VIII. Financial and Unbudgeted Expense Reserves—UCR Depository Manager

The UCR Depository Manager will report on the financial and unbudgeted expense reserve fund.

IX. 2019 Administrative Expenses—UCR Depository Manager

The UCR Depository Manager will provide a report on 2019 administrative expenses.

X. Other Business—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

XI. Adjourn—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

Education and Training Subcommittee Meeting

Proposed Agenda

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 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 Subcommittee 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 January 16, 2020 Meeting—UCR Operations Manager

For Discussion and Possible Subcommittee Action

- Minutes from the January 16, 2020 Education and Training Subcommittee meeting will be reviewed and the Subcommittee will consider action to approve.

V. Report on Plans to Launch Training Modules—UCR Operations Manager

The UCR Operations Manager will report on plans to launch an initial wave of training modules by June 2020.

VI. Mandatory Training for States—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will lead a discussion on a proposed policy requiring all participating states to engage in UCR trainings once available. Specifically, the proposed policy would require at least one state representative to participate in any new remote trainings (*e.g.,* videos, webinars) within 30 days of its release, as well as attend any new live/in-person training when scheduled. The Subcommittee may act to recommend adoption of this policy to the Board.

VII. Travel Reimbursement for Training Attendees—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will next lead a discussion on a proposed policy stating that UCR will reimburse one attendee from each state for reasonable travel expenses incurred for attending any mandatory UCR trainings. The Subcommittee may act to recommend adoption of this policy to the Board.

VIII. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

IX. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

These agendas will be available no later than 5:00 p.m. Eastern daylight time, January 17, 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. 2020–00837 Filed 1–15–20; 11:15 am]

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FEDERAL REGISTER

Vol. 85 Friday,

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Part II

Department of the Treasury

Office of Investment Security

31 CFR Parts 800 and 801

Provisions Pertaining to Certain Investments in the United States by Foreign Persons; Final Rule

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 801

RIN 1505–AC64

Provisions Pertaining to Certain Investments in the United States by Foreign Persons

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Final rule; and interim rule with request for comments.

SUMMARY: The final rule revises regulations that implement certain provisions of section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). The interim rule also adds a new definition for the term ''principal place of business'' and the Department of the Treasury is seeking comments on this definition. While this rule retains many features of the prior regulations, the rule makes a number of substantive changes, primarily to implement FIRRMA.

DATES:

Effective date: The final rule is effective on February 13, 2020. The interim rule regarding § 800.239 is effective on February 13, 2020.

Applicability date: See § 800.104.

Comment date: The Department of the Treasury (Treasury Department) is seeking written comments from the public on the definition of ''principal place of business'' found at § 800.239, which must be received by February 18, 2020.

ADDRESSES: Written comments on § 800.239 may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Laura Black, Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Please submit comments only and include your name and company name (if any), and cite ''Provisions Pertaining to Certain Investments in the United States by Foreign Persons'' in all correspondence. In general, the Treasury Department will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; David Shogren, Senior Policy Advisor; or Alexander Sevald, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute and Proposed Rules

On August 13, 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115–232, 132 Stat. 2173, became law. FIRRMA amended and updated section 721 (section 721) of the Defense Production Act of 1950 (DPA), which delineates the authorities and jurisdiction of the Committee on Foreign Investment in the United States (CFIUS or the Committee). FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and it broadens the authorities of the President and CFIUS under section 721 to review and to take action to address any national security concerns arising from certain non-controlling investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction. In FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reaffirmed the United States' open investment policy, consistent with the protection of national security. *See* section 1702(b) of FIRRMA.

FIRRMA requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (January 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. On October 11, 2018, the Treasury Department published its first rulemaking under FIRRMA in the form of an interim rule, which amended the regulations in part 800 to implement, and make updates consistent with, certain provisions of FIRRMA that became immediately effective (October 2018 Interim Rule). *See* 83 FR 51316 (October 11, 2018). The October 2018 Interim Rule took effect on November 10, 2018.

The Treasury Department published a second interim rule on October 11, 2018, pursuant to section 1727(c) of FIRRMA, setting forth the scope of, and procedures for, a pilot program to review certain transactions involving foreign persons and critical technologies (Pilot Program Interim Rule). *See* 83 FR 51322 (October 11, 2018). The Pilot Program Interim Rule, which took effect on November 10, 2018, implemented jurisdiction over, and established mandatory declarations for, certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

On September 24, 2019, the Treasury Department published two proposed rules to implement provisions of FIRRMA. *See* 84 FR 50174 (September 24, 2019); 84 FR 50214 (September 24, 2019). (The Office of the Federal Register made versions available for public inspection on September 17, 2019.) Public comments on the proposed rules were due by October 17, 2019.

The proposed rule at 84 FR 50174 proposed amendments to CFIUS regulations codified at part 800 of title 31 of the Code of Federal Regulations (CFR). These provisions specifically relate to CFIUS's authorities and the process and procedures to review: (1) A merger, acquisition, or takeover by or with a foreign person that could result in foreign control of a U.S. business; (2) a non-controlling ''other investment'' that affords a foreign person specified access to information in the possession of, rights in, or involvement in the substantive decisionmaking of certain U.S. businesses related to critical technologies, critical infrastructure, or sensitive personal data; (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or an ''other investment'' in certain U.S. businesses; or (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721. Further explanation of FIRRMA and the proposed provisions can be found in the proposed rule at 84

FR 50147; changes to the proposed rule are explained in further detail below.

The proposed rule at 84 FR 50214, which proposed regulations to implement the provisions of FIRRMA related to CFIUS's new jurisdiction to review certain types of transactions involving real estate in the United States, is being finalized in a separate and concurrent rulemaking. That rule adds a part 802 to chapter VIII of title 31 of the CFR to implement FIRRMA's expansion of CFIUS's jurisdiction over transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

FIRRMA also authorizes the Committee to assess and collect fees with respect to covered transactions for which a written notice is filed. The Treasury Department will publish a separate proposed rule implementing the Committee's fee authority at a later date.

B. Structure of FIRRMA Rulemaking and This Rule

Consistent with CFIUS processes generally, this rule reflects extensive consultation with CFIUS member agencies, as well as other relevant U.S. Government agencies. Given the specificity of certain provisions of the rule, the Treasury Department anticipates that it will periodically review, and when necessary, amend the regulations to address changes in technology, data use, and the national security landscape more generally.

This action finalizes the revisions to part 800. The rule retains many features of the provisions of part 800 prior to their revision by the October 2018 Interim Rule and this rule. *See* 73 FR 70702 (November 21, 2008) (Prior Regulations), while implementing the changes that FIRRMA made to CFIUS's jurisdiction and process. In amending part 800 to incorporate CFIUS's new jurisdiction over certain non-controlling ''other investments'' (which this rule describes as ''covered investments''), certain conforming revisions were made to existing provisions. For example, the coverage section in subpart C of the rule regarding ''covered control transactions'' is based on the ''covered transactions'' section in the Prior Regulations and provides examples illustrating transactions that are covered control transactions and those that are not. There is also now a covered investment section within the coverage section in subpart C that provides examples illustrating transactions that are covered under the new jurisdiction. The rule seeks to provide clarity to the business and investment communities with respect to the types of U.S. businesses that are covered under FIRRMA's ''other investment'' authority.

The rule also incorporates the changes made to part 800 in the October 2018 Interim Rule published in October 2018, 83 FR 51316 (October 11, 2018), and updates certain other provisions, generally as a result of written submissions received during this rule's public comment period and the public comment period of the Pilot Program Interim Rule, such as amending the definitions of ''excepted investor'' and ''sensitive personal data,'' clarifying the application of the ''incremental acquisition rule,'' refining several examples, and making adjustments to the information requirements for declarations and notices. In response to public comments, this action also implements an interim rule with respect to the definition of ''principal place of business'' at § 800.239, and the Treasury Department is seeking public comment on this definition.

In the proposed rule, the Treasury Department noted that it was considering whether to retain the mandatory filing requirement under the Pilot Program Interim Rule. The rule incorporates many of the provisions of the Pilot Program Interim Rule, including the mandatory filing requirements for covered transactions involving critical technologies. However, the Treasury Department anticipates issuing a notice of proposed rulemaking that would revise the mandatory declaration requirement regarding critical technology at § 800.401(c) from one based upon North American Industry Classification System (NAICS) codes to one based upon export control licensing requirements.

As noted in the Pilot Program Interim Rule, the pilot program was temporary and was required by FIRRMA to end no later than March 5, 2020. This rule modifies the applicability of the pilot program so that it applies only to transactions for which specified actions were taken prior to the effective date of this rule. Because the Committee retains jurisdiction over pilot program covered transactions that were subject to the Pilot Program Interim Rule during the period of its effectiveness, the regulations at part 801 will remain in chapter VIII of title 31 of the CFR for reference. Accordingly, this rule revises the applicability rule in part 801, at § 801.103, to specify that part 801 applies only to pilot program covered transactions (as defined in part 801) for which specified actions occurred between November 10, 2018, and February 12, 2020.

II. Overview of Comments on the Proposed Rule and the Pilot Program Interim Rule

During the public comment period, the Treasury Department received a number of written submissions on the proposed rule reflecting a wide range of views. All comments received by the end of the comment period are available on the public rulemaking docket at *https://www.regulations.gov.* Additionally, the Treasury Department hosted a public teleconference call to discuss the proposed rule on September 27, 2019, and a summary is available on the Committee's section of the Treasury Department website.

Following the publication of the Pilot Program Interim Rule in October 2018, the Treasury Department also received a number of written comments on that rule, which are similarly available on the public rulemaking docket and are addressed herein.

The Treasury Department considered each comment submitted. Some of the comments were general in nature, for example, supporting the Treasury Department's efforts and approach with respect to aspects of the proposed rule. Other commenters noted the potential impact of the proposed rule and the Pilot Program Interim Rule on foreign investment in the United States. The Treasury Department recognizes the vital importance of foreign investment to the U.S. economy. The Treasury Department drafted the proposed rule and Pilot Program Interim Rule, and made revisions in finalizing the rule, to protect U.S. national security from the risk posed by certain foreign investment while at the same time maintaining the open foreign investment policy of the United States. The Treasury Department has determined that the specificity provided in the rule—with respect to, for example, identification of covered investment critical infrastructure in the appendix and specific categories of sensitive personal data—provides clarity to the business and investment communities with respect to the types of transactions that are covered by the Committee's new authority under FIRRMA. The Treasury Department will evaluate implementation of the rule and will provide, as appropriate, additional information to assist the public.

Some comments requested clarification of specific provisions. Where appropriate, the Treasury Department provided additional clarification in the text of the rule and included more illustrative examples. Some commenters, however, requested greater specificity than is feasible in regulations of general applicability, or

revisions that conflict with the Committee's statutory authority under FIRRMA. The section-by-section analysis below includes responses to comments. Further edits were made to the rule for consistency and clarity.

In addition to comments on the substance of the rule, two commenters requested an extension of the public comment period for the proposed rule. The Treasury Department did not extend the public comment period in light of the fixed effective date established by FIRRMA. The Treasury Department anticipates that it will periodically review, and as necessary, make changes to the regulations (and any appendices), consistent with applicable law and, when appropriate, will provide the public an opportunity to comment.

III. Discussion of the Rule

a. Relationship With Part 802

Before addressing individual sections of the rule raised in the comments or otherwise revised from the proposed rule, it is important to address the relationship between this rule and the new rule for part 802 of this chapter, which as noted is being issued concurrently with this rule.

The new part 802 clarifies that a ''covered transaction,'' as defined by this part 800, that also includes the purchase, lease, or concession of ''covered real estate,'' as that term is defined in part 802, is not a ''covered real estate transaction,'' as defined in part 802. If a party intends to notify CFIUS of a transaction as subject to this part 800, the transaction should not be notified under part 802. The concurrent rulemaking for part 802 discusses the relationship between the two rules in greater detail.

b. Interim Rule: Section 800.238—Principal Place of Business

This rule includes a definition of ''principal place of business'' as an interim rule. The interim rule is effective as of February 13, 2020, and the Treasury Department is seeking public comment on the new definition through February 18, 2020. The substance of the new definition is discussed below in conjunction with comments received to § 800.220 (definition of ''foreign entity'').

c. Summary of Comments and Changes From the Proposed Rule

1. Subpart A—General

Section 800.104—Applicability Rule

The rule makes clarifying edits to § 800.104 by inserting the date the regulations become effective (February 13, 2020), as well as clarifying that the Pilot Program Interim Rule will, going forward, apply only to transactions for which specified actions were taken on or after the effective date of the Pilot Program Interim Rule and prior to the effective date of this rule. This rulemaking includes conforming amendments to part 801 at § 801.104 to specify which transactions remain subject to part 801. As discussed further below, certain aspects of the mandatory declaration provisions of the Pilot Program Interim Rule have been incorporated into part 800 through this rule.

Section 800.105—Rules of Construction and Interpretation

The rule adds a new section to clarify that the examples included in the regulations are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part, as well as to clarify that, as used throughout the regulations, the term ''including'' means ''including without limitation.''

2. Subpart B—Definitions

The proposed rule made several changes to the definitions in the Prior Regulations and added several new definitions that are broadly applicable to both covered control transactions and covered investments.

Before addressing individual definitions, the Treasury Department notes that one commenter remarked that the regulations do not define ''national security.'' The rule makes no change to subpart B in response to this comment. In evaluating any transaction, CFIUS's analysis is guided by the law, including the applicable legislation. FIRRMA states that it is the sense of Congress that the Committee ''should continue to review transactions for the purpose of protecting national security and should not consider issues of national interest absent a national security nexus.'' *See* Section 1702(b)(9) of FIRRMA. Section 721(f) of the DPA provides an illustrative list of factors for consideration by the Committee and the President in determining whether a covered transaction poses a national security risk. Additionally, the Treasury Department previously published Guidance Concerning the National Security Review Conducted by CFIUS, 73 FR 74567 (December 8, 2008), which is still in effect.

Section 800.206—Completion Date

The proposed rule included a definition for ''completion date'' to clarify that, in the event that a covered transaction will be effectuated through multiple or staged closings, the completion date is the earliest date on which any transfer of interest or change in rights that constitutes a covered transaction occurs.

Commenters expressed concern that parties may be required to submit a declaration 30 days before completing the acquisition of a contingent equity interest, but that, under § 800.308 (*i.e.,* the timing rule for a contingent equity interest), the Committee could conclude that there is no covered transaction until the interest is converted. Commenters suggested that the definition of ''completion date'' be further refined to explicitly exclude transfers of contingent equity interests that are not subject to CFIUS jurisdiction consistent with § 800.308.

The rule makes no change to § 800.206 in response to these comments. The acquisition of a contingent equity interest alone, without the acquisition of control or the access, rights, or involvement specified in § 800.211(b), is not a covered transaction. Where a party later acquires control or the access, rights, or involvement specified in § 800.211(b) in connection with the earlier acquisition of a contingent equity interest, the submission of a mandatory declaration, if applicable, is required 30 days before the acquisition of such control or the access, rights, or involvement specified in § 800.211(b). The timing rule under § 800.308 specifies when a party will be considered to have acquired control or the access, rights, or involvement specified in § 800.211(b) (*i.e.,* upon actual conversion of the contingent equity interest, or upon initial acquisition of the contingent equity interest if certain factors are present).

Section 800.208—Control

Although the proposed rule did not significantly modify the definition of ''control'' from the Prior Regulations, commenters suggested that the threshold for control is too low, thereby discouraging foreign investment in U.S. companies. Commenters also requested additional clarifications, such as whether the rights described in § 800.307(a)(4) should be added to § 800.208. Finally, commenters suggested incorporating the excepted investor concept into the definition of ''control.''

The rule makes no change to § 800.208 in response to these comments. As noted in the preamble to the proposed rule, FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and

provides no legislative direction to substantively narrow the existing definition of ''control.'' In addition, given the many changes to the regulations required by FIRRMA, the Treasury Department determined that substantive amendments to the well-established control standard would not advance the goal of transactional certainty at this time. The Treasury Department also notes that additional information regarding control transactions is available in responses to certain frequently asked questions that may be found at the Committee's section of the Treasury Department website.

Furthermore, as noted in the preamble to the proposed rule, the excepted investor concept addresses FIRRMA's requirement that the Committee limit the application of FIRRMA's expanded jurisdiction over covered investments to certain categories of foreign persons. The Treasury Department followed this legislative direction by limiting the excepted investor concept to covered investments, and not extending it to control transactions, thereby maintaining the same jurisdiction over control transactions as in the Prior Regulations.

Regarding the limited partner rights described in § 800.307(a)(4), each of the rights is already substantively covered in § 800.208(a). While the rule makes no specific revisions to § 800.208 with respect to limited partners, the rule does provide additional clarification for investment funds in other provisions, including in the definitions of ''principal place of business'' and ''substantial interest,'' and in § 800.401.

Finally, the rule makes a technical correction to § 800.208(c)(4) to clarify that anti-dilution protections are more accurately characterized as a right instead of a power.

Section 800.211—Covered Investment

The proposed rule used the term ''covered investment'' to capture an investment by a foreign person in certain types of U.S. businesses that affords the foreign person certain access to information in the possession of, rights in, or involvement in the substantive decisionmaking of such U.S. businesses but that does not afford the foreign person control over the U.S. business. One commenter requested clarification regarding the applicability of the access, rights, or involvement described in § 800.211(b) in situations in which the U.S. business that produces, designs, tests, manufactures, fabricates, or develops the critical technology is a subsidiary of the U.S. business in which the foreign person invests. The rule adds an example showing the application of § 800.211(b) in situations where the investment affords a foreign person membership or observer rights on the board of directors or equivalent governing body of a U.S. business that operates as a TID U.S. business through a subsidiary.

Other commenters requested additional clarification regarding the meaning of ''access to material nonpublic technical information,'' including the timing of access and whether theoretical or potential access should be included. The rule makes no change to § 800.211 in response to these comments. CFIUS's new jurisdiction under FIRRMA is established once a foreign investor in a TID U.S. business has been afforded access to material nonpublic technical information, regardless of whether or when the investor exercises the right of access.

Section 800.212—Covered Investment Critical Infrastructure

To distinguish the subset of critical infrastructure that is relevant for the Committee's jurisdiction over covered investments from critical infrastructure more broadly, the proposed rule created a new term, ''covered investment critical infrastructure.'' This definition references a list of specific systems and assets in appendix A of the rule. As noted in the preamble to the proposed rule, the subset of critical infrastructure identified in appendix A does not alter the definition of ''critical infrastructure'' as used in any other regulatory regime or context. Different commenters suggested either narrowing this subset or expanding it, for example to include railcars and communication equipment. The rule makes no change to § 800.212 or appendix A in response to these comments. Appendix A reflects extensive consultation with subject matter experts at CFIUS member agencies, as well as other relevant U.S. Government agencies, who, in developing appendix A, considered, among other factors, whether other U.S. Government authorities provided adequate protections for national security. The Treasury Department will evaluate implementation of the rule, and when necessary, revise the regulations (and any appendices) to address changes in the national security landscape.

Section 800.213—Covered Transaction

The proposed rule defined ''covered transactions'' to include covered control transactions, covered investments, changes in a foreign person's rights with respect to a U.S. business that could result in foreign control of a U.S. business or a covered investment in certain U.S. businesses, and transactions structured to evade or circumvent CFIUS review. Commenters sought additional information about what types of changes in rights trigger CFIUS's jurisdiction over a covered transaction, including in the context of a foreign investor in a U.S. business exercising the right to purchase additional interest to prevent the dilution of its *pro rata* interest. Commenters also suggested that transactions falling below a minimum threshold for the investment amount or the annual revenue of the U.S. business should be exempted from the definition of ''covered transaction.''

The rule makes no change to § 800.213 in response to these comments. With respect to a change in rights that results in a ''covered transaction,'' the rule provides examples in § 800.213(e)(1) and (2), respectively (note that these and certain other examples were moved to § 800.213 from subpart C for clarity). Additionally, the examples in § 800.304(f)(2) and (5) address the acquisition of additional equity interest. With respect to implementing a minimum threshold for a covered transaction, the Treasury Department has determined that a categorical exemption for transactions below a minimum threshold is unwarranted. The Committee evaluates each transaction based upon the particular facts and circumstances, including the size of the investment and other factors.

Section 800.215—Critical Technologies

The proposed rule defined ''critical technologies'' as set forth in FIRRMA. Commenters recommended narrowing the definition and noted that the Department of Commerce, at the time of the proposed rule, had yet to define emerging and foundational technologies under section 1758 of the Export Control Reform Act of 2018 (ECRA). The rule makes no change to § 800.215 in response to these comments. FIRRMA defines ''critical technologies,'' and FIRRMA does not give the Treasury Department discretion to change this statutory definition through these regulations. Accordingly, the rule does not independently define emerging and foundational technologies. Rather, it incorporates by cross-reference the emerging and foundational technologies that the Department of Commerce identifies pursuant to a separate rulemaking, as required by ECRA.

Section 800.218—Excepted Foreign State

The proposed rule defined ''excepted foreign state'' to refer to a group of eligible foreign states for purposes of

implementing FIRRMA's requirement that the Committee limit the application of FIRRMA's expanded jurisdiction over covered investments to certain categories of foreign persons. The Treasury Department received several comments on this definition, including requests that the Committee publish the criteria by which a foreign state is identified as an eligible foreign state. Other commenters suggested that the Committee identify certain countries or certain defined lists of countries as excepted foreign states. Some commenters recommended against the excepted foreign state and excepted investor provisions and argued that the provisions treat allies of the United States differently from other countries.

The rule makes no change to § 800.218 in response to these comments. As noted above, FIRRMA directs that implementing regulations must limit the application of ''other investment'' jurisdiction to certain categories of foreign persons, and the Treasury Department therefore cannot eliminate the concepts of excepted foreign state and excepted investor entirely without adopting an alternative limitation. With respect to the eligible foreign states, the Committee has initially selected Australia, Canada, and the United Kingdom of Great Britain and Northern Ireland. The Committee identified these countries due to aspects of their robust intelligence-sharing and defense industrial base integration mechanisms with the United States. Additionally, as noted in the preamble to the proposed rule, the concept and definition of ''excepted foreign states'' are new and an expansive application carries potentially significant implications for the national security of the United States. Consequently, the Committee is initially identifying a limited number of eligible foreign states and may expand the list in the future.

The rule revises § 800.218 to clarify that the definition of ''excepted foreign state'' operates as a two-criteria conjunctive test, with delayed effectiveness for the second criterion. Thus, as of February 13, 2020, each of the three foreign states that the Committee identifies as an eligible foreign state will be an excepted foreign state, without regard to the second criterion (*i.e.,* favorable determination under § 800.1001). In order for each of these countries to remain an excepted foreign state after the end of the two-year delayed effectiveness period (*i.e.,* February 13, 2022), the Committee must make a determination under § 800.1001. This two-year period is intended to provide these initial eligible foreign states time to ensure that their national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment reviews meet the requirement under § 800.1001. This two-year period also provides the Committee time to develop processes and procedures for making determinations under § 800.1001, which could be applied to a broader group of countries in the future. In selecting the initial eligible foreign states, the Committee takes no position on whether the foreign states currently meet the determination factors discussed below at § 800.1001. Finally, the rule removes language regarding internal Committee processes (for which a conforming change was also made in § 800.1001), and revises note 1 to § 800.218 to clarify the publication mechanics for identifying the foreign states that have met each of the two separate criteria of the definition of ''excepted foreign state.''

Section 800.219—Excepted Investor

The proposed rule set forth a definition of ''excepted investor,'' taking into account increasingly complex ownership structures and accounting for such structures in the application of the Committee's jurisdiction. Commenters suggested relaxing the criteria to allow more entities to qualify as excepted investors, including the criteria related to the nationality of board members and observers, the percentage ownership limit for an individual investor in an excepted investor, and the minimum excepted ownership. In response to these comments, the rule modifies the definition of ''excepted investor.'' First, the board member nationality criterion is revised to allow up to 25 percent representation by foreign nationals of foreign states that are not excepted foreign states. Second, the percentage ownership limit for an individual investor in an excepted investor is revised from five to 10 percent. Third, the definition of ''minimum excepted ownership'' under § 800.233 is revised as discussed below.

One commenter suggested that the Committee narrow the types of felonies that disqualify an investor from excepted investor status to those relating to national security. The rule makes no change to § 800.219 in response to this comment. Because excepted investor status limits the Committee's jurisdiction, the regulations appropriately preserve jurisdiction over transactions by foreign investors that have been convicted of, or entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to, any felony, in the five years prior to the completion date of the transaction.

Some commenters requested that the Committee consider the specific commenters themselves to be excepted investors or sought additional information regarding the process to qualify as an excepted investor, including how an excepted investor can prove that status, or whether an excepted investor would receive a form or certificate from the Committee establishing that status. The rule makes no change to § 800.219 in response to these comments. There is no separate process for the Committee to provide a determination for a prospective investor on whether it qualifies as an excepted investor. As with other jurisdictional determinations, parties themselves should assess whether they qualify as excepted investors.

Commenters suggested that the Committee adopt a category similar to excepted investor, which some termed ''trusted investor,'' that would allow certain investors who are not connected to an excepted foreign state to receive the benefits of excepted investor status. Commenters further suggested various criteria for this ''trusted investor'' concept, including the individual investor's previous interactions with the Committee, the investor's record of compliance with mitigation agreements, and whether the investor is subject to an agreement to mitigate foreign ownership, control, or influence (FOCI) pursuant to the National Industrial Security Program regulations.

The rule makes no change to § 800.219 in response to these comments. Consistent with FIRRMA, the ''excepted investor'' definition focuses on the investor's connection to an excepted foreign state, which provides the greatest clarity to the business and investment communities while protecting national security interests. Such a definition also furthers the Committee's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and increase cooperation with the United States. Notably, the ''excepted investor'' definition eliminates Committee jurisdiction for specified transactions by certain investors. Therefore, some criteria suggested by commenters as part of the ''trusted investor'' concept are less suitable for determining jurisdiction and more suitable for other aspects of the rule, such as determining which parties must make mandatory filings under § 800.401. For example, the rule now provides an exception to mandatory filings for foreign

investments via FOCI-mitigated entities under § 800.401, as discussed below.

One commenter cautioned that the public may equate excepted investor status with trust and may misconstrue that an investor who does not qualify as an excepted investor is not trusted and could present greater national security concerns. In this regard, it is important to note that not qualifying as an excepted investor should not be interpreted as an individualized assessment that the particular foreign person poses a threat to national security.

Commenters expressed an inaccurate view of the minimum excepted ownership criterion's application up the ownership chain of the foreign person. All of the conditions under § 800.219(a)(3), including the minimum excepted ownership conditions, apply to *each* ''*parent*'' (as defined at § 800.235) of the foreign person.

Finally, the rule revises § 800.219(b) to specify when the ownership interests of separate foreign persons will be aggregated for the purposes of § 800.219(a)(3)(iv). The rule also modifies § 800.219(d) to include the criteria in § 800.219(c)(1)(i) through (iii) in order to retain jurisdiction over certain transactions where the foreign investor is deemed not to be an excepted investor subsequent to the transaction due to action by the President under section 721, or enforcement by the Committee of violations under this part, parts 801 or 802, or section 721.

Section 800.220—Foreign Entity/New Section 800.239—Principal Place of Business

The proposed rule did not change the definition of ''foreign entity'' from the Prior Regulations. Commenters requested further clarification regarding CFIUS's jurisdiction over transactions by investment funds, and recommended revising the definition of ''foreign entity'' to focus on control by foreign persons, rather than the amount of equity held by foreign persons. Other commenters urged the Committee to provide additional clarity by defining ''principal place of business.'' The rule makes no change to § 800.220, but does include a new definition of ''principal place of business'' as an interim rule at § 800.239 in response to these comments.

The proposed rule used the term ''principal place of business'' but did not define it. Commenters recommended that the regulations include a definition, and one suggested the ''nerve center'' test used by U.S. courts to evaluate federal diversity jurisdiction. Under the new definition at § 800.239, a party's ''principal place of business'' is defined as ''the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent,'' subject to the qualification in § 800.239(b). For those entities whose nerve center is in the United States, the purpose of the qualification in § 800.239(b) is to nevertheless ensure consistent treatment of an entity's principal place of business in accordance with its own assertions to government entities, provided the facts have not changed since those assertions. The Treasury Department believes that this definition achieves substantially the same result as potential revisions to the definition of ''foreign entity'' suggested by commenters to address investment funds managed and controlled by U.S. persons in the United States.

Because the definition of ''principal place of business'' in § 800.239 is new, it is being made effective by this rule on an interim basis and may be amended based on comments received. As an interim rule, § 800.239 will become effective on the same date as the other provisions in this rule (*i.e.,* February 13, 2020) to provide clarity and certainty for transaction parties. The Treasury Department invites comments on this interim rule, in particular with respect to whether § 800.239 adequately addresses concerns raised by commenters seeking greater clarity concerning investment funds managed and controlled by U.S. persons.

Section 800.224—Foreign Person

The proposed rule used the definition of ''foreign person'' from the Prior Regulations. The rule adds a new subsection (b) to clarify that an entity which is controlled by a ''foreign person'' is itself a ''foreign person.''

Section 800.225—Identifiable Data

The proposed rule defined the term ''identifiable data'' to mean data that can be used to distinguish or trace an individual's identity, including through the use of any personal identifier. The definition noted that, for the avoidance of doubt, aggregated data or anonymized data is ''identifiable data'' if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual's identity. Commenters addressed data aggregation and anonymization in the context of this definition. Some commenters suggested that the Treasury Department was incorrectly considering the ability of the foreign acquirer to disaggregate or de-anonymize data; they suggested that the focus of the Committee's inquiry should be on whether the U.S. business being acquired or invested in could disaggregate or de-anonymize the data. Similar comments were received regarding encryption and de-encryption capabilities. The rule makes no change in response to these comments. A foreign acquirer that would receive access to data that has been encrypted or anonymized, and for which the foreign acquirer has the ability to re-identify, is a relevant factor in the Committee's risk assessment. Any militating effect afforded by de-identification would be lost if the foreign acquirer is able to re-identify the data.

Section 800.232—Material Nonpublic Technical Information

The proposed rule provided a definition of ''material nonpublic technical information'' consistent with the definition in FIRRMA. Commenters asked for clarification about the scope of the definition of material nonpublic technical information, such as whether it is limited to information necessary to reverse engineer a technology or product, whether it includes information typically afforded to minority investors such as technical milestones, and what is meant by ''not available in the public domain.''

The rule adds an illustrative example regarding technical milestones in response to the comments. No other changes were made. What constitutes ''material nonpublic technical information'' will depend on particular facts and circumstances. ''Material nonpublic technical information may include,'' but is not limited to, information necessary to reverse engineer a component of a company's product. Conversely, information that is readily accessible to people with no connections to the TID U.S. business is likely in the public domain and therefore not material nonpublic technical information. However, any such a determination requires a fact-specific evaluation of the information that may be provided.

Section 800.233—Minimum Excepted Ownership

The proposed rule defined ''minimum excepted ownership'' along with other terms which operate together to exclude from CFIUS's jurisdiction covered

investments by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states. Commenters suggested that the percentage threshold of minimum excepted ownership should be lowered; that privately held and publicly traded entities be treated the same; and that for investment funds, the minimum excepted ownership requirement should apply only to the general partner. Commenters also requested clarifications to address situations where the interests in an entity are not voting interests and to help entities determine whether § 800.233(a) or § 800.233(b) is applicable.

In response to these comments, the rule amends § 800.233 by reducing the minimum excepted ownership percentage in § 800.233(b) from 90 to 80 percent. The rule does not adopt the suggestion to treat privately held and publicly traded entities the same. The different treatment reflects the difference in governance realities between publicly traded companies (typically one share, one vote) and privately held companies (which can vary widely and may provide minority shareholders outsized rights relative to their ownership stake). The rule also does not adopt the suggestion to apply the minimum excepted ownership criteria only to the general partner in a fund setting. Investment fund structures can vary significantly, and limited partners may have significant rights vis-à-vis their investment interests.

With regard to non-voting interests, note that the regulations already accommodate different structures by also considering rights to profits or rights to assets in the event of dissolution, a formulation that has existed in the definition of ''parent'' since the Prior Regulations. Finally, to qualify for the lower threshold in § 800.233(a), which is in turn used in the application of the criteria in § 800.219(a)(3)(v), the majority of an entity's outstanding shares must be traded on one or more exchanges in the United States or in an excepted foreign state.

Section 800.235—Parent

The proposed rule did not change the definition of ''parent'' from the Prior Regulations. One commenter, however, asked if the regulations should clarify whether a general partner of a partnership (or equivalent) is a ''parent'' of that partnership. The rule adds a provision at § 800.235(a)(2) that explicitly includes a general partner, managing member, or equivalent of an entity within the definition of ''parent.'' The rule also makes some minor technical edits and adds an example illustrating an entity with more than one parent.

Section 800.236—Party to a Transaction

The proposed rule provided, at § 800.236(a)(1), that a party to a transaction includes a target U.S. business whose ownership interest is being transferred between third parties. One commenter sought additional clarification about which party or parties to a covered transaction are required to submit a mandatory declaration under § 800.401. The rule makes no change to the text of § 800.236 in response to this comment. The obligation to file a mandatory declaration is on the parties to such transaction. Finally, there appears to be confusion by some commenters about which entity is a party to a transaction in a fund context. Note that § 800.236 provides a definition of ''party to a transaction,'' which includes the person acquiring an ownership interest. In a fund context, this is typically the fund itself (and not the general partner), though, as noted in § 800.401(j)(3), there are circumstances in which a limited partner may have a mandatory filing obligation based on its indirect investment while the fund itself does not.

Section 800.241—Sensitive Personal Data

The proposed rule set forth a detailed definition of ''sensitive personal data.'' Commenters suggested that the scope of ''sensitive personal data,'' as defined in the proposed rule, may exceed what is necessary to protect national security. Commenters also noted that unnecessarily burdensome regulation negatively impacts technological advancements, such as artificial intelligence. The Treasury Department is cognizant of the potential impacts of the CFIUS process on foreign investment and has endeavored to be specific and circumspect in delineating the Committee's new authorities over covered investments where appropriate and consistent with national security.

One commenter suggested further narrowing the definition by focusing the ''target or tailor'' prong on contractors or employees of national security agencies that support the national security functions, rather than all employees of such agencies. The rule makes no change in response to this comment. Certain U.S. Government employees may not have direct national security functions, but may nevertheless support critical missions of the agency and present equal sensitivity with respect to sensitive personal data as colleagues that do have direct national security functions. In many cases, it would be difficult for parties to ascertain the specific functions that U.S. Government employees may have within their respective agency.

Commenters also suggested that CFIUS exempt from the definition data held by companies that meet certain internationally-recognized standards for the protection of data, such as those set out by the National Institute of Standards and Technology (NIST) or International Organization for Standardization. However, these standards are voluntary in nature, and currently no enforcement mechanism exists to require that businesses comply with them. The Treasury Department is not the appropriate entity to monitor compliance with voluntary standards such as these, and the rule makes no change in response to this comment.

Commenters suggested that the ''demonstrated business objective'' concept is vague and would deter investment in start-up businesses. In response to this comment, an example has been added to the rule, at § 800.241(c)(5), to illustrate a case where a ''demonstrated business objective'' exists under § 800.241(a)(1)(i)(C).

In response to a comment requesting clarity, the rule specifies that § 800.241(a)(1)(ii)(A) applies only to financial data that could be used to determine an individual's financial distress or hardship.

Commenters also discussed the threshold for the number of individuals on whom a business collects and maintains data. Some suggested increasing the threshold for capturing sensitive personal data from one million individuals to, for example, five million U.S. citizens. These commenters argued that the lower threshold in the proposed rule might capture too many businesses that do not pose national security risks. Other commenters stated that these provisions could hinder the growth of social networking companies or financial technology start-ups. One commenter asked whether, for a company with a defined business plan to maintain or collect data on over one million people, the rule requires that the business plan describe with particularity an objective to maintain or collect such data, or merely the objective to have one million users, whose data is incidentally collected or maintained.

The rule does not make any changes to the threshold of one million individuals. Section 800.241(a)(1)(i)(B) and (C) accounts for the possibility that a U.S. business holds sensitive personal data on sensitive individuals despite not

targeting or tailoring their products or services to sensitive populations. In accordance with FIRRMA, the rule requires that a U.S. business collect or maintain ''sensitive personal data'' on U.S. citizens. *See* § 800.248(c). The threshold, however, refers to individuals, rather than U.S. citizens, because it is unfeasible in most cases for a U.S. business to confirm the citizenship status of individuals of whom it has maintained or collected sensitive personal data. The threshold of one million individuals will ensure that large data collectors, which in many industries account for the vast majority of data being collected, will be included. Conversely, the threshold will minimize additional regulatory burden for many small businesses and companies that incidentally collect or maintain data on a small number of individuals.

The rule makes clarifying edits to § 800.241(a)(1)(i) and adds examples in § 800.241(c)(1)-(5) to further illustrate the rule's application. Examples 1–3 in § 800.241(c) address the timing element of the one million individual threshold, showing that if the U.S. business collects or maintains the applicable data on over one million people at any time over the preceding twelve months, the requirement in § 800.241(a)(1)(i)(A) is met. Example 4 clarifies that the parties should consider the number of individuals for whom sensitive personal data is maintained or collected in the aggregate across the enumerated categories. Example 5, as noted above, illustrates the scope of the ''demonstrated business objective'' provision.

Commenters also addressed the proposed rule's treatment of genetic data. Some suggested that the scope of genetic information as proposed was too broad, and that it should be narrowed in a way that remains consistent with national security. Others suggested narrowing the definition to focus on, for example, identifiable data or information about a person's full genome, to better tailor the definition to national security concerns. Other commenters recommended modifying the definition to exclude anonymized data obtained from drug discovery or clinical trials, or aggregated data from large heterogeneous populations.

In response to these comments, the rule recalibrates this provision on genetic testing data and does so in two ways: First, by focusing the definition on ''genetic tests'' as that term is defined in the Genetic Information Non-Discrimination Act of 2008 (GINA); and second, by limiting the coverage of the rule to identifiable data. To account for datasets commonly used in research, the rule also carves out genetic testing data derived from databases maintained by the U.S. Government and routinely provided to private parties for the purposes of research.

Section 800.244—Substantial Interest

The proposed rule established a voting interest threshold for the definition of ''substantial interest.'' Commenters requested additional clarification on its application, including with respect to limited partners of investment funds, asked whether this provision applies to only a single foreign government, and inquired about the mechanics of § 800.244 regarding the voting interests of parents.

The rule revises § 800.244 in response to these comments. It clarifies, in § 800.244(a), that substantial interest applies to a single foreign government, which is consistent with the definition of ''foreign government'' at § 800.222, which, in turn, includes both national and subnational governments, including their respective departments, agencies, and instrumentalities. In § 800.244(a), the rule also excludes governments of excepted foreign states in order to better synchronize the application of the two mandatory filing requirements under § 800.401.

Additionally, the rule revises § 800.244(b) to define ''substantial interest,'' in certain circumstances, as a foreign government's interests in the general partner (or equivalent) only, disregarding its limited partner interests. This provides clarity to parties in the investment fund context and focuses the substantial interest analysis on the entity that typically is responsible for the day-to-day decisionmaking regarding the investment fund. Finally, the rule adds illustrative examples.

Section 800.248—TID U.S. Business

The proposed rule defined the types of businesses with certain involvement in critical technology, critical infrastructure, and sensitive personal data in which an investment may constitute a covered investment. Commenters requested clarification regarding the application of this rule to a U.S. business that indirectly maintains or collects sensitive personal data. In response to these comments, the rule adds examples addressing scenarios in which a U.S. business is maintaining or collecting sensitive personal data indirectly via an intermediary.

Additionally, the rule adds illustrative examples with respect to critical technology, informed by the Committee's experience with respect to the pilot program on certain transactions involving foreign persons and critical technologies. One example illustrates that the mere verification of the fit and form of a relevant critical technology is not ''testing'' under § 800.248(a). Another example illustrates that a U.S. business that ceases performing one of the actions listed in § 800.248(a) but retains the ability to perform the relevant action with regard to a critical technology, is a TID U.S. business.

Finally, with respect to TID U.S. businesses described in § 800.252(a) (*i.e.,* those related to critical technology) it is important for parties to be aware that the rule establishes the Committee's jurisdiction over covered investments in any U.S. business that ''produces, designs, tests, manufactures, fabricates, or develops'' one or more critical technologies. However, as discussed below in connection with § 800.401, the rule requires mandatory declarations for transactions involving only a subset of these TID U.S. businesses.

Section 800.251—United States

The rule revises the definition of ''United States'' for consistency with the definition in FIRRMA.

Section 800.252—U.S. Business

The proposed rule revised the definition of ''U.S. business'' from the Prior Regulations by excluding the phrase ''but only to the extent of its activities in interstate commerce in the United States.'' Commenters requested that the Committee restore the prior definition of ''U.S. business'' or provide clarity with respect to the Committee's intended interpretation of that term. The rule makes no change to the proposed definition. The proposed definition tracks the language of FIRRMA and is not intended to suggest that the extent of a business's activities in interstate commerce in the United States is irrelevant to the Committee's analysis of national security risk.

The rule also makes amendments to example 2 of § 800.252(b) to illustrate that a business may export and license technology and provide services into the United States, yet not qualify as a U.S. business for purposes of the rule.

Section 800.254—Voting Interest

The proposed rule did not change the definition of ''voting interest'' from the Prior Regulations. Commenters sought additional clarification about the scope of the voting interest involved, including whether it includes consent, veto, or other special rights, or how parties should calculate voting interest in situations where there are different

levels of voting interest types (*e.g.,* preferred stock). Commenters also suggested the term be limited to voting interests in major decisions.

The rule makes no change to § 800.254 in response to these comments. The definition of ''voting interest'' is long-established, and, as many commenters noted, any revisions will have wide-ranging effects throughout the regulations because voting interest is incorporated into other defined terms, such as parent. Where appropriate, the Treasury Department provided clarification through revisions to other sections of the regulations, for instance, with respect to the definition of ''substantial interest'' in § 800.244, discussed above.

3. Subpart C—Coverage

Subpart C of the proposed rule included provisions that described with particularity transactions that are, or are not, ''covered control transactions'' or ''covered investments.'' These provisions contain several examples illustrating different scenarios, and commenters requested additional examples, including particular examples illustrating the rule's treatment of export agreements or technology transfers.

In response to these comments, the rule revises and supplements the examples in § 800.305 through § 800.307, as further discussed below. The rule also makes technical revisions to § 800.301 through § 800.304, and § 800.308. Note that technology transfers are separately addressed by export control regulations promulgated by the Department of Commerce and the Department of State. The Treasury Department refers the public to the Export Administration Regulations, at 15 CFR parts 730–774, and the International Traffic in Arms Regulations, at 22 CFR parts 120–130.

Section 800.305—Incremental Acquisitions

The proposed rule provided affirmative assurance that certain transactions subsequent to a covered control transaction for which the Committee concluded all action under section 721 on the basis of a notice are not covered transactions. Commenters requested a number of clarifications, including regarding whether an incremental investment or acquisition of additional rights in a U.S. business by a foreign person that already controls that business would constitute a covered transaction. Other commenters asked whether the Committee will communicate to parties whether the Committee found jurisdiction over a particular investment as a covered control transaction or a covered investment, or how the incremental acquisition rule applies to related but not wholly owned entities.

Revisions were made in response to some of the comments. The rule expands the incremental acquisition rule to apply to transactions made subsequent to a covered control transaction submitted to the Committee via declaration, and for which the Committee concludes action based upon that declaration. The rule also makes technical edits and adds an example regarding related entities. Additionally, note that the Committee, in response to a notice, currently informs parties whether an investment is a covered control transaction or a covered investment.

Section 800.306—Lending Transactions

The proposed rule expanded the Prior Regulations' provision on ''lending transactions'' to address covered investments. A commenter noted that the mandatory declaration requirement may present challenges in the context of lending transactions and recommended that the Treasury Department not subject lenders to the mandatory declaration requirement for transactions involving a default on a loan, or, in the alternative, the parties in such a situation be required to file as soon as practicable.

The rule makes no change in response to this comment. Lenders typically do not automatically acquire title to assets in the event of a default on a loan. In these cases, the lender must first perform an affirmative act, such as transferring ownership interests using a stock power, thus allowing the lender to comply with the mandatory declaration provision in § 800.401, if applicable, before performing such act. Moreover, even in the event of a default on a loan, lenders typically use commercially reasonable efforts to cure the event of default with the borrower, and only resort to taking title of assets as a last resort. These efforts typically last longer than the 30-day advance notification time requirement for mandatory declarations under § 800.401. If, however, parties to a transaction subject to the mandatory declaration requirement are unable to timely file a submission due to circumstances of a default, the Committee will consider the circumstances in assessing any potential civil monetary penalty determination.

The rule does, however, revise § 800.306, including its examples, to further clarify and illustrate its application to covered investments.

Section 800.307—Specific Clarification for Investment Funds

The proposed rule implemented FIRRMA's provisions relating to investment funds. Commenters to the investment fund provisions supported the limitation on the application of CFIUS's review authority over certain investment funds. Other commenters requested clarification on the scope of CFIUS's jurisdiction with respect to investment funds. For example, a commenter asked if CFIUS's jurisdiction extends to an investment fund organized outside of the United States but which has U.S. general and limited partners. The rule makes no change in response to these comments in § 800.307 because the Treasury Department cannot provide confirmation of commenters' legal interpretations, clarifications, or examples based on hypothetical scenarios that are highly fact-specific. Note that, as discussed further below, additional examples have been added in § 800.401 addressing investment funds in the context of mandatory declarations.

Another commenter suggested including additional examples illustrating certain rights that would not provide a limited partner with the ability to control the fund, or in the alternative, narrowing the statutorily enumerated examples of rights that would constitute control. The Committee's authority in this respect is limited by the provision in FIRRMA relating to investment funds, and the rule makes no change in response to this comment.

One commenter noted that the Committee's section of the Treasury Department website describing the pilot program (which features responses to frequently asked questions) clarifies that failure to meet all of the criteria in § 801.304(a) does not necessarily mean that an indirect investment by the foreign person in a TID U.S. business through an investment fund is a covered transaction. Consistent with § 801.304, § 800.307(a) is not intended to create a presumption that any investment by a foreign person in a TID U.S. business through an investment fund is a covered transaction if the criteria in § 800.307(a) are not met; the particular facts and circumstances of the investment would need to be considered.

A commenter suggested that the definition is intended as a barrier to investment by foreign-government owned investment funds, because foreign-government owned or controlled funds cannot seek exemption to the mandatory declaration requirements,

while some investment funds that are not state-owned or controlled may seek this waiver. The investment fund clarification addresses scenarios involving foreign limited partners in investment funds that are managed exclusively by another party. A foreign-government owned or controlled investment fund is inconsistent with such scenarios, which typically involve passive limited partners. The rule makes no change in response to this comment.

Finally, the rule revises the lead-in of § 800.307(a) and criteria in § 800.307(a)(2) regarding a general partner of an entity, in both instances to conform with the language of FIRRMA.

Section 800.308—Timing Rule for a Contingent Equity Interest

The Treasury Department received comments regarding the interaction of the timing rule in § 800.308 with mandatory filings required under § 800.401, including suggestions to revise the definition of ''completion date'' in § 800.206, discussed above. The rule makes no change in response to these comments. In cases where the conversion of a contingent equity interest may result in a covered transaction that requires the submission of a filing under § 800.401, parties are advised to carefully consider whether § 800.308 is applicable to avoid potential penalties.

4. Subpart D—Declarations

The proposed rule set out an abbreviated filing process through the submission of a declaration, as directed by FIRRMA. Commenters stated that the declaration process impacts foreign direct investment by putting foreign firms at a competitive disadvantage vis-à-vis U.S. investors, especially in the context of competitive auctions. Commenters also proposed that CFIUS commit to notify parties of specific national security concerns, if any, in a transaction to enable the parties to promptly address such concerns.

Commenters also requested that the Treasury Department create an expedited review process for evaluating declarations (or notices) submitted by parties with whom the Committee is already familiar through having reviewed and cleared prior transactions involving the same foreign person. One commenter suggested the Committee provide ''comfort letters'' to certain investors who have been reviewed by the Committee previously and found not to pose a national security threat. Finally, commenters requested that CFIUS make available a list of factors it considers when reviewing declarations that, if addressed by the parties, would lead to the Committee concluding all action on the transaction in 30 days.

The rule makes no change to the process and procedures for declarations in response to these comments. The Treasury Department is aware of the importance of timing to transaction parties and notes that the declaration process itself is an expedited review. The Committee must evaluate each transaction based upon the particular facts and circumstances, including the identity of the parties involved. As a result, the DPA provided for a specific review period to enable CFIUS agencies to carry out their national security responsibilities, and it would not be in the interest of national security for the Committee to further accelerate the assessment period. Similarly, it is not appropriate for the Committee to prescribe in regulations a list of factors that will expedite the Committee's assessment of a declaration, given the fact-specific nature of each assessment conducted by the Committee.

Section 800.401—Mandatory Declarations

The proposed rule included a mandatory declaration requirement for transactions involving a ''substantial interest'' by a foreign government. Comments related to the mandatory filing requirement under § 800.401(b) are addressed in the discussion of the definition of ''substantial interest'' under § 800.244, above. The Pilot Program Interim Rule set forth a mandatory declaration requirement for covered transactions involving certain critical technology TID U.S. businesses. The Treasury Department received comments on the Pilot Program Interim Rule, both in response to the October 2018 publication of the Pilot Program Interim Rule and in response to the September 2019 publication of the proposed rule for part 800.

Commenters noted the complexity involved in assessing which investments require mandatory filings under the Pilot Program Interim Rule, including with respect to assessing whether a certain U.S. business's connection to certain industries identified by NAICS codes meets the requirements of § 801.213 in the Pilot Program Interim Rule. Some commenters suggested that the Committee not continue to exercise its authority under FIRRMA to require mandatory declarations for transactions involving certain U.S. businesses with activities relating to critical technologies. Other commenters recommended that the regulations require mandatory declarations only for transactions involving a defined subset of critical technologies (*e.g.,* only emerging and foundational technologies), or remove the mandatory filing requirement for certain other critical technologies that do not raise national security concerns (*e.g.,* non-sensitive encryption software) or certain sectors (*e.g.,* biotechnology) in order to encourage foreign investment in those sectors.

Commenters also suggested that certain categories of investors, such as excepted investors or FOCI-mitigated entities, be exempted from the mandatory declaration requirement for control transactions or, as applicable, covered investments, or that the Committee waive mandatory filings for transactions involving the acquisition of certain rights—such as a board seat—in a U.S. business so as not to impact foreign investment.

The rule integrates the mandatory declaration requirement from the Pilot Program Interim Rule, which is based upon whether a transaction involves certain U.S. businesses with a nexus to specified industries identified by NAICS codes. However, the Treasury Department anticipates issuing a separate notice of proposed rulemaking that would replace this requirement with a mandatory declaration requirement based upon export control licensing requirements. Additionally, in response to public comments, the rule exempts certain transactions from the critical technology mandatory declaration requirement. These exemptions relate to excepted investors, FOCI-mitigated entities, certain encryption technology, and investment funds managed exclusively by, and ultimately controlled by, U.S. nationals. The Treasury Department anticipates that these exemptions would continue to apply even if the scope of the mandatory declaration requirement is modified as described above.

Commenters also requested the inclusion of a mechanism to the mandatory declaration requirements, through which the Committee would grant waivers to individual foreign investors (which some commenters described as ''trusted investors'') after evaluating such investors pursuant to various criteria. Some commenters suggested that this mechanism only apply to parties that have filed a notice that was cleared by the Committee, noting that the Committee will have already examined the investor and any national security concerns it presents through its review of the notice. The rule makes no change in response to these comments. The Treasury Department will continue to consider instituting a potential waiver

mechanism in the future. Once the Committee has more data on mandatory declarations under this rule, it can better assess the potential for a waiver program and mechanisms for implementation and administration.

Finally, one commenter requested clarification about the commencement of the 30-day advance notification requirement for mandatory declarations. As stated in § 800.401(g), this 30-day period begins when a declaration or notice, as applicable, is submitted, and not upon acceptance by the Staff Chairperson. Under § 800.401(i), in the event the Committee rejects or permits a withdrawal of the declaration (or notice), the 30-day period resets from the date of resubmission, absent written approval of the Staff Chairperson. The rule also includes an exception from mandatory declarations for air carriers to conform to FIRRMA.

Section 800.403—Procedures for Declarations

The proposed rule set forth the procedures for declarations. Commenters requested that CFIUS begin assessments of declarations, or provide feedback on a declaration, within five days of receiving it. The rule makes no change in response to these comments. The Committee makes every effort to provide feedback to the parties and initiate review of a transaction as quickly as possible. Consistent with FIRRMA, the rule does prescribe that the Committee respond within a set timeframe to voluntary notices that include certain stipulations.

Section 800.404—Contents of Declarations

The proposed rule set forth the information requirements for a declaration, consistent with FIRRMA's requirement that CFIUS establish declarations as ''abbreviated notices that would not generally exceed five pages in length.'' As part of a declaration, parties may voluntarily stipulate that the transaction is a covered transaction and, if so, whether the transaction is a foreign-government controlled transaction.

One commenter objected to the provision in § 800.404(e) that parties stipulate in a declaration that a transaction is a covered investment, covered transaction, or a foreign government-controlled transaction. Note that, under § 800.404(e), stipulations are not required from parties submitting declarations, but are available as an option and may help expedite the Committee's review. Making a stipulation does not affect judicial review of CFIUS's final decision regarding a transaction. Rather, parties that make a stipulation may not challenge a decision as to whether the transaction is a covered investment, covered transaction, or foreign government-controlled transaction, where that decision is based on the stipulation.

While no change was made to the declaration content requirement as a result of this comment, the rule makes modifications in this section to require additional information, including to allow the Committee to more efficiently assess whether a transaction is a covered transaction. For example, for declarations involving the acquisition of a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies, parties must describe the item(s) and the applicable export control classification/category.

Section 800.407—Committee Actions

The rule clarifies that the Committee may request that parties file a written notice under subpart E if it has reason to believe that the transaction may raise national security considerations.

5. Subpart E—Notices

The proposed rule set out the process for filing notices.

Section 800.501—Procedures For Notices

One commenter suggested that the Committee be prohibited from reviewing a transaction after a certain time period following its completion. The rule makes no change in response to this comment. Parties that wish to obtain safe harbor from the Committee with respect to previously completed transactions can undertake to do so by filing a voluntary notice or submitting a declaration.

Section 800.502—Contents of Voluntary Notices

One commenter suggested that asking parties for a cyber-security plan is insufficient to determine whether the party's information technology systems are adequately protected. The commenter recommended that the Committee rely on cyber-security standards promulgated by other federal agencies, such as the Department of Homeland Security, or NIST within the Department of Commerce. Alternatively, the commenter recommended using an algorithm to assess a filing party's cyber-security vulnerabilities and suggested requiring parties to meet certain cyber security standards. The rule makes no change in response to these comments. A company's cyber-security plan is relevant information for the Committee to consider. Adherence by a party to government or industry standards could be a relevant factor in the Committee's risk assessment, but is not necessary to prescribe in regulations. Revisions were made to § 800.502, which are similar to the revisions discussed above under § 800.404, as well as other clarifying edits.

6. Subpart G—Finality of Action

Section 721 maintains that a covered transaction that has been notified to CFIUS and on which CFIUS has concluded action under section 721 after determining that there are no unresolved national security concerns, qualifies for safe harbor from further action by the Committee. A commenter noted the rule lacked a safe harbor provision and requested additional guidance on how to structure a transaction to ensure it is not altered or overturned by the Committee.

In accordance with section 721, the rule provides a safe harbor to parties, under § 800.701, and through the incremental acquisition rule discussed above. Neither section 721 nor this rule prescribes transaction structures, allowing parties to structure transactions in the most appropriate manner based on the facts and circumstances of the particular transaction. As described above, section 721(f) of the DPA provides an illustrative list of factors for consideration by the Committee and the President in determining whether a covered transaction poses a national security risk. Additionally, the Treasury Department's previously published Guidance Concerning the National Security Review Conducted by CFIUS, 73 FR 74567 (December 8, 2008), is still in effect.

7. Subpart I—Penalties and Damages

Commenters requested that the Treasury Department promulgate guidelines on when it will assess civil monetary penalties. The Treasury Department is considering whether it can make additional information available to assist the public in understanding the Committee's enforcement priorities. A number of clarifying and technical edits were made to this subpart. Additionally, the rule revises § 800.901(f) to allow tolling of the Committee's deadline to respond to a petition, upon written agreement with the party, to facilitate further negotiations, including for settlement of the potential civil monetary penalty.

8. Subpart J—Foreign National Security Investment Review Regimes

Section 800.1001—Determinations

The proposed rule provided for Committee determinations regarding a foreign state's process to review foreign investment for national security in its own country and its cooperation with the United States with respect to review of foreign investment. Commenters recommended that the Committee, in making these determinations, recognize that differing systems can achieve the same outcomes, and avoid insisting that foreign states adopt procedures that mirror those of CFIUS.

The rule makes no change to § 800.1001 in response to these comments. The Treasury Department will in the near term publish on the Committee's section of its website the factors the Committee will take into consideration when making determinations, which focus on the substance of a foreign state's process and cooperation with the United States to address national security risks arising from foreign investment, and do not prescribe a specific form. Finally, such determinations are relevant only to the status of a foreign state as an excepted foreign state under the rule. They do not imply any broader U.S. Government approval of a foreign state's investment review regime, including aspects of a foreign state's investment review regime that may incorporate factors beyond national security.

9. Other Comments

The Treasury Department also received comments on topics not specifically addressed in the proposed rule. Commenters noted that the proposed rule did not address independent monitors for mitigation agreements, and recommended that the Committee provide additional clarification, including on monitor qualifications or whether monitors may provide additional services without violating the conflict of interest provision in FIRRMA. The rule makes no change in response to these comments. The Treasury Department takes seriously the importance of ensuring the integrity and qualifications of monitors, including avoidance of conflicts of interest. The Committee has extensive experience with the use of monitors for mitigation agreements and has found that appropriate safeguards can be incorporated into the mitigation agreement itself, which is dependent on facts and circumstances of each transaction.

IV. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which governs review of regulations by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, these regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018 Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Justification for Interim Rule

The proposed rule, and the proposed rule at 84 FR 50214, included provisions that use the term ''principal place of business.'' The Treasury Department received comments on these provisions, including recommendations to add a definition for the term.

In response to these comments, a definition for ''principal place of business'' has been included. The Treasury Department believes it would benefit the public and the Committee to receive comments from the public on this definition before it is made final. This rule therefore contains an interim rule that implements a definition for the term ''principal place of business'' that will become effective with the rest of the rule, and the Treasury Department is providing the public 30 days to comment on the new definition of ''principal place of business.''

It is in the public interest to make the ''principal place of business'' definition effective on the same date as the rule. Commenters requested greater clarity concerning which parties are subject to the mandatory declaration requirements and to CFIUS jurisdiction more generally. The new definition directly addresses those requests and provides greater transactional certainty. If the definition were not effective with this rule, some parties that, under the new definition, may not need to submit a declaration (or choose to file a notice in lieu of a mandatory declaration) with the Committee would nonetheless have to (or choose to) do so. By clarifying that certain parties need not submit declarations and that certain transactions are not subject to CFIUS jurisdiction, the addition of the definition of ''principal place of business'' reduces the regulatory burden on the public, allowing some parties to forego the expense, time, and uncertainty involved in submitting a declaration or filing a notice with the Committee. Because of the added clarity and potential reduction in regulatory burden the definition provides to the public, having it become effective immediately is in the public's interest. Nonetheless, the Treasury Department is requesting comments to that definition and will consider them before finalizing the interim rule.

Paperwork Reduction Act

The collections of information contained in this rule were submitted to OMB for review along with the proposed rule, in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507(d)). No comments were received to the PRA estimates. However, and as noted above, the Treasury Department has modified some of the information requests associated with notices and on the declarations form. These changes represent clarifications that the Treasury Department identified in its review of the information requirements, as well as changes necessary to implement certain provisions that were modified from the proposed rule. The additional information requested is not substantially different from the information that was proposed to be collected, and the Treasury Department's estimates of burden hours for completing declarations and notices do not differ from those estimated at the proposed rule stage. These collections have been submitted to OMB under control number 1505–0121.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Regulatory Flexibility Act

Regardless of whether the provisions of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), apply to this rulemaking, for reasons noted in the preamble to the proposed rule, the Treasury Department prepared for public comment an Initial Regulatory Flexibility Analysis and determined through that analysis that the proposed rule would most likely not affect a substantial number of small entities. The Treasury Department specifically requested comments on the proposed rule's effect on small entities; no such public comments were received. The Secretary of the Treasury hereby certifies that the rule will not have a significant economic impact on a

substantial number of small entities based on the following.

The rule expands the jurisdiction of the Committee to include additional types of transactions not previously subject to CFIUS review. Additionally, the Committee will retain its existing jurisdiction over any transaction through which any foreign person could acquire control of any U.S. business. Accordingly, the rule may impact any U.S. business, including a small U.S. business that engages in a covered transaction.

There is no single source for information on the number of small U.S. businesses that receive foreign investment (direct or indirect), including those involved with critical technologies, critical infrastructure, or sensitive personal data, such that they would be directly impacted by this rule. However, the Bureau of Economic Analysis (BEA) within the Department of Commerce collects, on an annual basis, data on new foreign direct investment in the United States through its Survey of New Foreign Direct Investment in the United States (Form BE–13). While these data are self-reported, and include only direct investments in U.S. businesses in which the foreign person acquires at least 10 percent of the voting shares (and consequently, do not capture investments below 10 percent, which may nevertheless be covered transactions), they nonetheless provide relevant information on a category of U.S. businesses that receive foreign investment, some of which may be covered by the proposed rule.

According to the BEA, in 2018, the most current year for which data is available, foreign persons obtained at least a 10 percent voting share in 832 U.S. businesses. *See* U.S. Bureau of Economic Analysis, ''Number of Investments Initiated in 2018, Distribution of Planned Total Expenditures, Size by Type of Investment,'' *https://apps.bea.gov/international/xls/Table15-14-15-16-17-18.xls* (last visited January 6, 2020). The BEA only reports the general size of the investment transaction, not the type of the U.S. business involved, nor whether the U.S. business is considered a ''small business'' by the Small Business Administration (SBA), which defines small businesses based on annual revenue or number of employees. The smallest foreign investment transactions that the BEA reports are those with a dollar value below $50 million. While not all U.S. businesses receiving a foreign investment of less than $50 million are considered ''small'' for the purposes of the RFA, many might be, and the number of U.S. businesses receiving foreign investments of less than $50 million can serve as a proxy for the number of transactions involving small U.S. businesses that might be subject to CFIUS's jurisdiction.

Of the above mentioned 832 U.S. businesses receiving foreign investment in 2018, 576 were involved in transactions valued at less than $50 million. Although this figure is under inclusive because it does not capture all transactions that could potentially fall under the rule, it also is over inclusive because it is not limited to any particular type of U.S. business. We believe the figure of 576 is the best estimate based on the available data of the number of small U.S. businesses that may be impacted by this rule.

According to the SBA, there are 30.2 million small businesses (defined as ''firms employing fewer than 500 employees'') in the United States as of 2018. *https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf* (last visited January 6, 2020). If approximately 600 small U.S. businesses will be potentially impacted by this rule, then the rule may potentially impact less than one percent of all small U.S. businesses. Accordingly, the Department of the Treasury does not believe the rule will impact a ''substantial number of small entities.''

Nonetheless, the rule includes provisions that would reduce the costs to all businesses, including small businesses. For example, the availability of a shorter declaration for covered transactions may result in smaller cost to entities than having to prepare a lengthier notice. Additionally, having a fillable form for declarations may reduce some of the cost for parties.

Congressional Review Act

This rule has been submitted to OIRA, which has determined that the rule is a ''major'' rule under the Congressional Review Act. However, the Treasury Department has determined there is good cause under 5 U.S.C. 808(2) to publish the rule notwithstanding the timing requirements for major rules under 5 U.S.C. 801(a)(3) because delaying the effectiveness of this rule beyond 30 days is impracticable, unnecessary, and contrary to the public interest. Under FIRRMA, the provisions expanding jurisdiction and establishing declarations, among others, will become effective on February 13, 2020, regardless of whether this rule is published and effective. *See* Section 1727(b)(1)(A) of FIRRMA. Without the processes, procedures and definitions provided by the rule as directed by FIRRMA, market participants will face substantial hardship, delay, and expense in complying with the requirements of FIRRMA. Accordingly, the Treasury Department finds good cause that notice and public procedure under 5 U.S.C. 801(a)(3) are impracticable, unnecessary, and contrary to the public interest. This rule will become effective on February 13, 2020, notwithstanding 5 U.S.C. 801(a)(3).

List of Subjects

31 CFR Part 800

Foreign investments in the United States, Investigations, Investments, Investment companies, National defense, Reporting and recordkeeping requirements.

31 CFR Part 801

Foreign investments in the United States, Investigations, Investments, Investment companies, National defense, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Treasury Department amends parts 800 and 801 of title 31 of the Code of Federal Regulations as follows:

■ 1. Revise part 800 to read as follows:

PART 800—REGULATIONS PERTAINING TO CERTAIN INVESTMENTS IN THE UNITED STATES BY FOREIGN PERSONS

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Appendix A to Part 800—Covered Investment Critical Infrastructure and Functions Related to Covered Investment Critical Infrastructure
Appendix B to Part 800—Industries

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General

§ 800.101 Scope.

(a) Section 721 of title VII of the Defense Production Act of 1950, as amended (50 U.S.C. 4565), authorizes the Committee on Foreign Investment in the United States to review any covered transaction, as defined in § 800.213 of this part, and to mitigate any risk to the national security of the United States that arises as a result of such transactions. Section 721 also authorizes the President to suspend or prohibit any covered transaction when, in the President's judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered transaction might take action that threatens to impair the national security of the United States, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security of the United States in the matter before the President.

(b) This part implements regulations pertaining to covered transactions. Regulations pertaining to ''covered real estate transactions'' are addressed in part 802 of this chapter.

§ 800.102 Risk-based analysis.

Any determination of the Committee with respect to a covered transaction to suspend, refer to the President, or to negotiate, enter into or impose, or enforce any agreement or condition under section 721 shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction. Any such risk-based analysis shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. For purposes of this part, any such analysis of risk shall include and be informed by consideration of the following elements:

(a) The *threat,* which is a function of the intent and capability of a foreign person to take action to impair the national security of the United States;

(b) The *vulnerabilities,* which are the extent to which the nature of the U.S. business presents susceptibility to impairment of national security; and

(c) The *consequences to national security,* which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.

§ 800.103 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 800.104 Applicability rule.

(a) Except as provided in paragraphs (b) and (c) of this section and otherwise in this part, the regulations in this part apply from February 13, 2020.

(b) Subject to paragraph (c) of this section, for any transaction for which the following has occurred before February 13, 2020, the corresponding provisions of the regulations in this part that were in effect on February 12, 2020, will apply:

(1) The completion date;

(2) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction;

(3) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(4) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S.

business or an owner or holder of a contingent equity interest has requested the conversion of the contingent equity interest.

(c) For any transaction to which part 801 of this title was applicable from November 10, 2018, through February 12, 2020, the regulations in part 801 in effect during that time will continue to apply.

Note 1 to § 800.104: See subpart I (Penalties and Damages) of this part for specific applicability rules pertaining to that subpart.

§ 800.105 Rules of construction and interpretation.

(a) The examples included in this part are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part.

(b) As used in this part, the term ''including'' means ''including but not limited to.''

Subpart B—Definitions

§ 800.201 Aggregated data.

The term *aggregated data* means data that have been combined or collected together in summary or other form such that the data cannot be identified with any individual.

§ 800.202 Anonymized data.

The term *anonymized data* means data from which all personal identifiers have been completely removed.

§ 800.203 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC, area are closed. For purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 800.401(g)(2) or § 800.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

Note 1 to § 800.203: See § 800.604 regarding the tolling of deadlines during a lapse in appropriations.

§ 800.204 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction; and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice, declaration, or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking partners, officers, and directors, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer or director of a corporation; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (4) of this section, such designee must possess actual authority to make the certification on behalf of the party filing a notice, declaration, or information.

Note 1 to § 800.204: A sample certification may be found at the Committee's section of the Department of the Treasury website.

§ 800.205 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 800.206 Completion date.

The term *completion date* means, with respect to a transaction, the earliest date upon which any ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred to a person, or a change in rights that could result in a covered control transaction or covered investment occurs.

Note 1 to § 800.206: See § 800.308 regarding the timing rule for a contingent equity interest.

§ 800.207 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event.

§ 800.208 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers or, in the case of a partnership, the general partner;

(9) The appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one

foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The right to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

(e) Examples:

(1) *Example 1.* Corporation A is a U.S. business. A U.S. investor owns 50 percent of the voting interest in Corporation A, and the remaining voting interest is owned in equal shares by five unrelated foreign investors. The foreign investors jointly financed their investment in Corporation A and vote as a single block on matters affecting Corporation A. The foreign investors have an informal arrangement to act in concert with regard to Corporation A, and, as a result, the foreign investors control Corporation A.

(2) *Example 2.* Same facts as the example in paragraph (e)(1) of this section with regard to the composition of Corporation A's shareholders. The foreign investors in Corporation A have no contractual or other commitments to act in concert, and have no informal arrangements to do so. Assuming no other relevant facts, the foreign investors do not control Corporation A.

(3) *Example 3.* Corporation A, a foreign person, is a private equity fund that routinely acquires equity interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

(4) *Example 4.* Corporation A, a foreign person, acquires a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A also acquires certain veto rights that determine important matters affecting Corporation B, including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

(5) *Example 5.* Corporation A, a foreign person, acquires a 13 percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member board of directors. Corporation A receives minority shareholder protections listed in paragraph (c) of this section but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

(6) *Example 6.* Corporation A, a foreign person, acquires a 20 percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

(7) *Example 7.* Limited Partnership A comprises two limited partners, each of which holds 49 percent of the interest in the partnership, and a general partner, which holds two percent of the interest. The general partner has sole authority to determine, direct, and decide all important matters affecting the partnership and a fund operated by the partnership. The general partner alone controls Limited Partnership A and the fund.

(8) *Example 8.* Same facts as the example in paragraph (e)(7) of this section, except that each of the limited partners has the authority to veto major investments proposed by the general partner and to choose the fund's representatives on the boards of the fund's portfolio companies. The general partner and the limited partners each have control over Limited Partnership A and the fund.

Note 1 to § 800.208: See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires 10 percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment. See § 800.303 regarding the Committee's treatment of transactions that do not result in control over a U.S. business by a foreign person, but may be covered investments. See § 800.305 regarding the Committee's treatment of a subsequent transaction involving a foreign person that previously acquired control of the U.S. business.

§ 800.209 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of a particular financial instrument to exchange any such instrument for an equity interest.

§ 800.210 Covered control transaction.

The term *covered control transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including such a transaction carried out through a joint venture.

§ 800.211 Covered investment.

The term *covered investment* means an investment, direct or indirect, by a foreign person other than an excepted investor, in an unaffiliated TID U.S. business that is proposed or pending on or after February 13, 2020, and that:

(a) Is not a covered control transaction; and

(b) Affords the foreign person:

(1) Access to any material nonpublic technical information in the possession of the TID U.S. business;

(2) Membership or observer rights on, or the right to nominate an individual to a position on, the board of directors or equivalent governing body of the TID U.S. business; or

(3) Any involvement, other than through voting of shares, in substantive decisionmaking of the TID U.S. business regarding:

(i) The use, development, acquisition, safekeeping, or release of sensitive personal data of U.S. citizens maintained or collected by the TID U.S. business;

(ii) The use, development, acquisition, or release of critical technologies; or

(iii) The management, operation, manufacture, or supply of covered investment critical infrastructure.

(c) Notwithstanding paragraphs (a) and (b) of this section, no investment involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102 shall be a covered investment.

(d) Example: Corporation A, a foreign person that is not an excepted investor, makes a non-controlling investment in Corporation B, a U.S. business, that affords Corporation A the right to nominate one of the directors on Corporation B's board of directors.

Corporation B, through its wholly-owned subsidiary Corporation X, designs and manufactures a critical technology. Corporation A's investment in Corporation B is a covered investment.

§ 800.212 Covered investment critical infrastructure.

The term *covered investment critical infrastructure* means, in the context of a particular covered investment, the systems and assets, whether physical or virtual, set forth in column 1 of appendix A to this part.

§ 800.213 Covered transaction.

The term *covered transaction* means any of the following:

(a) A covered control transaction;

(b) A covered investment;

(c) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in a covered control transaction or a covered investment; or

(d) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

(e) Examples:

(1) *Example 1.* Corporation A, a foreign person, acquires a 10 percent non-controlling equity interest in Corporation X, a U.S. business. Corporation X subsequently provides Corporation A the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional equity interest in Corporation X. Assuming no other relevant facts, the change in rights is a covered transaction.

(2) *Example 2.* Corporation A, a foreign person that is not an excepted investor, acquires a 10 percent non-controlling equity interest in Corporation X, an unaffiliated TID U.S. business, but Corporation A is not afforded any of the access, rights, or involvement specified in § 800.211(b) at the time of its investment. Corporation X later expands its board of directors and provides Corporation X with the right to appoint a director. Assuming no other relevant facts, the change in rights is a covered transaction.

(3) *Example 3.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. The transaction is a covered transaction.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state, is wholly owned and controlled by a foreign national, and is not an excepted investor. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, makes a non-controlling minority equity investment in Corporation X, an unaffiliated TID U.S. business that maintains and collects sensitive personal data of U.S. citizens. In connection with the investment, the U.S. citizen is afforded the right to be involved in substantive decisionmaking regarding the release of sensitive personal data of U.S. citizens maintained by Corporation X. The transaction is a covered transaction.

Note 1 to § 800.213: Any transaction described in (a) through (d) of this section that arises pursuant to a bankruptcy proceeding or other form of default on debt is a covered transaction. See also § 800.306 for the treatment of certain lending transactions.

§ 800.214 Critical infrastructure.

The term *critical infrastructure* means, in the context of a particular covered control transaction, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.

§ 800.215 Critical technologies.

The term *critical technologies* means the following:

(a) Defense articles or defense services included on the United States Munitions List (USML) set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130);

(b) Items included on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774), and controlled—

(1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(2) For reasons relating to regional stability or surreptitious listening;

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810 (relating to assistance to foreign atomic energy activities);

(d) Nuclear facilities, equipment, and material covered by 10 CFR part 110 (relating to export and import of nuclear equipment and material);

(e) Select agents and toxins covered by 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73; and

(f) Emerging and foundational technologies controlled under section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

§ 800.216 Encrypted data.

The term *encrypted data* means data to which National Institute of Standards and Technology (NIST)-allowed cryptographic techniques, as identified in the most current NIST special publication 800–175B, or superseding publication, have been applied.

§ 800.217 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the U.S. Government, a subnational government within the United States, and any of their respective departments, agencies, or instrumentalities). (See examples in § 800.301(g)(5) through (14) and § 800.302(g)(5) through (10).)

§ 800.218 Excepted foreign state.

The term *excepted foreign state* means, until February 13, 2022, a foreign state that meets the criteria in paragraph (a) of this section, and, beginning on February 13, 2022, a foreign state that meets both the criteria in paragraphs (a) and (b) of this section:

(a) Is identified by the Committee as an eligible foreign state, and

(b) Is a foreign state for which the Committee has made a determination under § 800.1001(a).

Note 1 to § 800.218: The name of each foreign state identified by the Committee as an eligible foreign state will be available at the Committee's section of the Department of the Treasury website. See § 800.1001(c) regarding the publication of a notice in the **Federal Register** of a determination under § 800.1001(a). The list of excepted foreign states will also be available at the Committee's section of the Department of the Treasury website.

§ 800.219 Excepted investor.

(a) The term *excepted investor* means a foreign person who is, as of the completion date of the transaction and subject to paragraphs (c) and (d) of this section:

(1) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(2) A foreign government of an excepted foreign state; or

(3) A foreign entity that meets each of the following conditions with respect to itself and each of its parents (if any):

(i) Such entity is organized under the laws of an excepted foreign state or in the United States;

(ii) Such entity has its principal place of business in an excepted foreign state or in the United States;

(iii) Seventy-five percent or more of the members and 75 percent or more of the observers of the board of directors or equivalent governing body of such entity are:

(A) U.S. nationals; or

(B) Nationals of one or more excepted foreign states who are not also nationals of any foreign state that is not an excepted foreign state;

(iv) Any foreign person that individually, and each foreign person that is part of a group of foreign persons that in the aggregate, holds 10 percent or more of the outstanding voting interest of such entity; holds the right to 10 percent or more of the profits of such entity; holds the right in the event of dissolution to 10 percent or more of the assets of such entity; or otherwise could exercise control over such entity, is:

(A) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(B) A foreign government of an excepted foreign state; or

(C) A foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States; and

(v) The minimum excepted ownership of such entity is held, individually or in the aggregate, by one or more persons each of whom is:

(A) Not a foreign person;

(B) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(C) A foreign government of an excepted foreign state; or

(D) A foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States.

(b) For purposes of paragraph (a)(3)(iv) of this section, foreign persons who are related, have formal or informal arrangements to act in concert, or are agencies or instrumentalities of, or controlled by, the national or subnational governments of a single foreign state are considered part of a group of foreign persons and their individual ownerships are aggregated.

(c) Notwithstanding paragraph (a) of this section, a foreign person is not an excepted investor with respect to a transaction if:

(1) In the five years prior to the completion date of the transaction the foreign person, any of its parents, or any entity of which it is a parent:

(i) Has received written notice from the Committee that it has submitted a material misstatement or omission in a notice or declaration or made a false certification under this part or part 801 or 802 of this title;

(ii) Has received written notice from the Committee that it has violated a material provision of a mitigation agreement entered into with, material condition imposed by, or an order issued by, the Committee or a lead agency under section 721(l);

(iii) Has been subject to action by the President under section 721(d);

(iv) Has:

(A) Received a written Finding of Violation or Penalty Notice imposing a civil monetary penalty from the Department of the Treasury, Office of Foreign Assets Control (OFAC); or

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(v) Has received a written notice of debarment from the Department of State, Directorate of Defense Trade Controls, as described in 22 CFR parts 127 and 128;

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce, Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*), the EAR, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(vii) Has received a final decision from the Department of Energy, National Nuclear Security Administration imposing a civil penalty with respect to a violation of section 57b. of the Atomic Energy Act of 1954, as implemented under 10 CFR part 810; or

(viii) Has been convicted of, or has entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to, any felony in any jurisdiction within the United States; or

(2) The foreign person, any of its parents, or any entity of which it is a parent is, on the date on which the parties to the transaction first execute a binding written agreement, or other binding document, establishing the material terms of the transaction, listed on either the BIS Unverified List or Entity List in 15 CFR part 744.

(d) Irrespective of whether the foreign person satisfies the criteria in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date, the foreign person no longer meets all the criteria set forth in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section, the foreign person is not an excepted investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted investor no longer meets any of the criteria solely due to a rescission of a determination under § 800.1001(b) or if the relevant foreign state otherwise ceases to be an excepted foreign state.

(e) A foreign person may waive its status as an excepted investor with respect to a transaction at any time by submitting a declaration under § 800.403 or filing a notice under § 800.501 regarding the transaction in which it explicitly waives such status. In such case, the foreign person will be deemed not to be an excepted investor with respect to the transaction and the relevant provisions of subpart D or E will apply.

Note 1 to § 800.219: See § 800.501(c)(2) regarding an agency notice where a foreign person is not an excepted investor solely due to § 800.219(d).

§ 800.220 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that can demonstrate that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

§ 800.221 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the U.S. Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

§ 800.222 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered control transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

§ 800.223 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 800.224 Foreign person.

(a) The term *foreign person* means:

(1) Any foreign national, foreign government, or foreign entity; or

(2) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

(b) Any entity over which control is exercised or exercisable by a foreign person is a foreign person.

(c) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and operating only outside the United States, is not a foreign entity due to § 800.220(b) and is not a foreign person.

(2) *Example 2.* Same facts as the first sentence of the example in paragraph (c)(1) of this section. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A because a law establishing Corporation A gives the foreign state the right to appoint Corporation A's board members. Corporation A is a foreign person.

(3) *Example 3.* Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

(5) *Example 5.* Corporation A is organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the equity interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement with any other holder of equity interest in Corporation A to act in concert regarding Corporation A. Corporation A can demonstrate that the remainder of the equity interest in Corporation A is ultimately held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign entity or foreign person.

(6) *Example 6.* Same facts as the example in paragraph (c)(5) of this section, except that one of the foreign investors, a foreign national, controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity due to § 800.220(b), but it is a foreign person under paragraph (a)(2) of this section because it is controlled by a foreign national.

§ 800.225 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

§ 800.226 Identifiable data.

The term *identifiable data* means data that can be used to distinguish or trace an individual's identity, including through the use of any personal identifier. Aggregated data or anonymized data is identifiable data if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual's identity. Identifiable data does not include encrypted data, unless the U.S. business that maintains or collects the encrypted data has the means to de-encrypt the data so as to distinguish or trace an individual's identity.

§ 800.227 Investment.

The term *investment* means the acquisition of equity interest, including contingent equity interest.

§ 800.228 Investment fund.

The term *investment fund* means any entity that is an ''investment company,'' as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or would be an ''investment company'' but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

§ 800.229 Involvement.

The term *involvement* means the right or ability to participate, whether or not exercised, including by doing any of the following:

(a) Providing input into a final decision;

(b) Consulting with or providing advice to a decisionmaker;

(c) Exercising special approval or veto rights;

(d) Participating on a committee with decisionmaking authority; or

(e) Advising on the appointment officers or selecting employees who are engaged in substantive decisionmaking.

§ 800.230 Lead agency.

The term *lead agency* means the Department of the Treasury and any other agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 800.231 Manufacture.

Solely for the purposes of column 2 of appendix A to this part, the term *manufacture* means to produce or reproduce, whether physically or virtually.

§ 800.232 Material nonpublic technical information.

(a) The term *material nonpublic technical information* means information that:

(1) Provides knowledge, know-how, or understanding, in each case not available in the public domain, of the design, location, or operation of covered investment critical infrastructure, including vulnerability information such as that related to physical security or cybersecurity; or

(2) Is not available in the public domain and is necessary to design, fabricate, develop, test, produce, or manufacture a critical technology, including processes, techniques, or methods.

(b) The term *material nonpublic technical information* does not include financial information regarding the performance of an entity.

(c) Examples:

(1) *Example 1.* Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is a U.S. business that services an industrial control system utilized by an interstate oil pipeline that has the capacity to transport 600,000 barrels per day of crude oil

(ICS B). ICS B is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. The source code for ICS B is not available in the public domain. Pursuant to the terms of the investment, Corporation A will have access to the source code for ICS B. The proposed investment therefore affords Corporation A access to material nonpublic technical information in the possession of Corporation B regarding the design and operation of covered investment critical infrastructure.

(2) *Example 2.* Fund A, a foreign person that is not an excepted investor, proposes to acquire a five percent, non-controlling equity interest in Corporation B. Corporation B is an unaffiliated TID U.S. business that develops a critical technology (Technology Z). Pursuant to the terms of the investment, Corporation B will notify Fund A when it achieves the developmental milestone of completing a demonstration prototype of Technology Z. The notification will only set out the milestone achieved and will not include technical details. Assuming no other facts, the proposed investment does not afford Fund A access to material nonpublic technical information in the possession of Corporation B necessary to design, fabricate, develop, test, produce, or manufacture a critical technology.

§ 800.233 Minimum excepted ownership.

The term *minimum excepted ownership* means:

(a) With respect to an entity whose equity securities are primarily traded on an exchange in an excepted foreign state or the United States, a majority of its voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets; and

(b) With respect to an entity whose equity securities are not primarily traded on an exchange in an excepted foreign state or the United States, 80 percent or more of its voting interest, the right to 80 percent or more of its profits, and the right in the event of dissolution to 80 percent or more of its assets.

§ 800.234 Own.

Solely for the purposes of column 2 of appendix A to this part, the term *own* means to directly possess the applicable covered investment critical infrastructure.

§ 800.235 Parent.

(a) The term *parent* means, with respect to an entity:

(1) A person who or which directly or indirectly:

(i) Holds or will hold at least 50 percent of the outstanding voting interest in the entity; or

(ii) Holds or will hold the right to at least 50 percent of the profits of the entity, or has or will have the right in the event of dissolution to at least 50 percent of the assets of the entity; or

(2) The general partner, managing member, or equivalent of the entity.

(b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.,* the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

(c) Examples:

(1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S; Corporation R holds 40 percent of the voting interest in Corporation X; and Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

(2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

(3) *Example 3.* Investor A holds 60 percent of the outstanding voting interest in Corporation B. Investor C holds the right to 80 percent of the profits of Corporation B. Each of Investor A and Investor C is a parent of Corporation B.

§ 800.236 Party to a transaction.

(a) The term *party to a transaction* means:

(1) In the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, the person from whom such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(2) In the case of a merger, the surviving entity, and the entity or entities that are merged with or into that entity in the transaction;

(3) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;

(4) In the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest;

(5) In the case of the acquisition or conversion of contingent equity interests, the issuer and the person holding the contingent equity interests;

(6) In the case of a change in rights that a person has with respect to an entity in which that person has an investment, the person whose rights change as a result of the transaction and the entity to which those rights apply;

(7) In the case of any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transaction, transfer, agreement, or arrangement;

(8) In the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a)(1) through (7) of this section; and

(9) In all cases, each party that submitted a declaration or notice to the Committee regarding a transaction.

(b) For purposes of section 721(l), the term *party to a transaction* includes any affiliate of any party described in paragraph (a) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

§ 800.237 Person.

The term *person* means any individual or entity.

§ 800.238 Personal identifier.

The term *personal identifier* means name, physical address, email address, social security number, phone number, or other information that identifies a specific individual.

§ 800.239 Principal place of business.

(a) The term *principal place of business* means, subject to paragraph (b) of this section, the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent.

(b) If the location determined under paragraph (a) of this section is in the United States and the entity has represented to the U.S. Government or a subnational government of the United States or any foreign government, in the most recent submission or filing to such government (other than a submission or filing to the Committee) in which the entity has identified its principal place of business, principal office and place of business, address of principal executive offices, address of headquarters, or equivalent, that any of the foregoing is outside the United States, then the location identified in such submission or filing is deemed for purposes of this definition to be the entity's principal place of business unless the entity can demonstrate that such location has changed to the United States since such submission or filing.

§ 800.240 Section 721.

The term *section 721* means section 721 of title VII of the Defense

Production Act of 1950, as amended (50 U.S.C. 4565).

§ 800.241 Sensitive personal data.

(a) The term *sensitive personal data* means, except as provided in paragraph (b) of this section:

(1) Identifiable data that is:

(i) Maintained or collected by a U.S. business that:

(A) Targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel and contractors thereof;

(B) Has maintained or collected any identifiable data within one or more categories described in paragraph (a)(1)(ii) of this section on greater than one million individuals at any point over the twelve (12) months preceding the earliest of the completion date, the date of any of the events described in § 800.104(b)(2) through (4) (as applicable), or the date of filing of a written notice or submission of a declaration, unless the U.S. business can demonstrate that at the time of the completion date of the transaction it had or will have neither the capability to maintain nor the capability to collect any identifiable data within one or more categories described in paragraph (a)(1)(ii) of this section on greater than one million individuals; or

(C) Has a demonstrated business objective to maintain or collect any identifiable data within one or more categories described in paragraph (a)(1)(ii) of this section on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services; and

(ii) Within any of the following categories:

(A) Financial data that could be used to analyze or determine an individual's financial distress or hardship;

(B) The set of data in a consumer report, as defined under 15 U.S.C. 1681a, unless such data is obtained from a consumer reporting agency for one or more purposes identified in 15 U.S.C. 1681b(a) and such data is not substantially similar to the full contents of a consumer file as defined under 15 U.S.C. 1681a;

(C) The set of data in an application for health insurance, long-term care insurance, professional liability insurance, mortgage insurance, or life insurance;

(D) Data relating to the physical, mental, or psychological health condition of an individual;

(E) Non-public electronic communications, including email, messaging, or chat communications, between or among users of a U.S. business's products or services if a primary purpose of such product or service is to facilitate third-party user communications;

(F) Geolocation data collected using positioning systems, cell phone towers, or WiFi access points such as via a mobile application, vehicle GPS, other onboard mapping tool, or wearable electronic device;

(G) Biometric enrollment data including facial, voice, retina/iris, and palm/fingerprint templates;

(H) Data stored and processed for generating a state or federal government identification card;

(I) Data concerning U.S. Government personnel security clearance status; or

(J) The set of data in an application for a U.S. Government personnel security clearance or an application for employment in a position of public trust; and

(2) The results of an individual's genetic tests, including any related genetic sequencing data, whenever such results constitute identifiable data. Such results shall not include data derived from databases maintained by the U.S. Government and routinely provided to private parties for purposes of research. For purposes of this paragraph, ''genetic test'' shall have the meaning provided in 42 U.S.C. 300gg–91(d)(17).

(b) The term *sensitive personal data* shall not include, regardless of the applicability of the criteria described in paragraph (a) of this section:

(1) Data maintained or collected by a U.S. business concerning the employees of that U.S. business, unless the data pertains to employees of U.S. Government contractors who hold U.S. Government personnel security clearances; or

(2) Data that is a matter of public record, such as court records or other government records that are generally available to the public.

(c) Examples:

(1) *Example 1.* Corporation A, a U.S. business, periodically collects geolocation data as described in paragraph (a)(1)(ii)(F) of this section on its customers for marketing and customer experience purposes. Corporation A maintains the geolocation data for a short period, then purges the data from its systems. When Corporation A and a foreign person notify the Committee of a transaction, Corporation A maintains the geolocation data of only 200,000 individuals. However, in the 12 months prior to filing the notification to the Committee, Corporation A has collected the geolocation data of greater than one million individuals. Because Corporation A collected the geolocation data of greater than one million individuals in the 12 months prior to the filing date of the notice, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(2) *Example 2.* Corporation A, a U.S. business, collects data relating to physical health conditions as described in paragraph (a)(1)(ii)(D) from new customers, which numbered fewer than one million over the 12 months prior to executing a definitive binding agreement to be acquired by a foreign person. Under its data retention policy, Corporation A maintains the health data for a long period of time. Accordingly, Corporation A maintains the health data from new customers (those from whom the data was collected in the previous 12 months) and older customers (those from whom the data was collected in prior years). In total, Corporation A maintains the health data of three million individuals. Because Corporation A maintains health data of greater than one million individuals, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(3) *Example 3.* Same facts as the example in paragraph (c)(2) of this section, except that, under its data retention policy, the number of individuals for whom Corporation A maintains the health data fluctuates. Over the 12 months prior to executing a definitive binding agreement to be acquired by a foreign person, Corporation A usually maintained the health data of 900,000 individuals. However, at one point during the prior 12 months, it maintained the health data of 1,100,000 individuals. Corporation A currently maintains the health data of fewer than one million individuals. Because Corporation A maintained the health data of greater than one million individuals during the 12 months prior to executing a definitive binding agreement to be acquired by a foreign person, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(4) *Example 4.* Corporation A, a U.S. business, maintains data under multiple categories in paragraph (a)(1)(ii) of this section on over one million individuals. Specifically, Corporation A maintains financial data described by paragraph (a)(1)(ii)(A) of this section on 400,000 individuals, and health data described by paragraph (a)(1)(ii)(D) of this section on another 700,000 individuals. Because Corporation A maintains the data described in the categories in paragraph (a)(1)(ii) on greater than one million individuals, despite not maintaining or collecting data of greater than one million individuals in any one category, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(5) *Example 5.* Corporation A, a U.S. business, is a start-up mobile mapping venture that has maintained or collected geolocation data described by paragraph (a)(1)(ii)(F) of this section on substantially fewer than one million individual subscribers over the 12 months prior to completing a transaction with a foreign person. The geolocation data is an integrated part of Corporation A's primary product, mobile mapping services. Corporation A, in connection with attempting to secure an additional round of financing, has prepared and distributed to potential investors pitch materials that include Corporation A's projection that, within the next two years, it will have greater than one million active individual subscribers. Corporation A also

has made plans to substantially increase its workforce and enhance its IT infrastructure in anticipation of obtaining the additional subscribers. Corporation A meets the criteria of paragraph (a)(1)(i)(C) of this section of having a demonstrated business objective to maintain or collect data described in paragraphs (a)(1)(ii)(A) through (J) of this section on greater than one million individuals.

§ 800.242 Service.

Solely for the purposes of column 2 of appendix A to this part, the term *service* means to repair, maintain, refurbish, replace, overhaul, or update.

§ 800.243 Solely for the purpose of passive investment.

(a) Ownership interests are held or acquired *solely for the purpose of passive investment* if the person holding or acquiring such interests does not plan or intend to exercise control and—

(1) Is not afforded any rights that if exercised would constitute control;

(2) Does not acquire any access, rights, or involvement specified § 800.211(b);

(3) Does not possess or develop any purpose other than passive investment; and

(4) Does not take any action inconsistent with holding or acquiring such interests solely for the purpose of passive investment. (See § 800.302(b).)

(b) Example: Corporation A, a foreign person, acquires a voting interest in Corporation B, a U.S. business. In addition to the voting interest, Corporation A negotiates the right to appoint a member of Corporation B's board of directors. The acquisition by Corporation A of a voting interest in Corporation B is not solely for the purpose of passive investment.

§ 800.244 Substantial interest.

(a) The term *substantial interest* means, in the context of an acquisition of an interest in a U.S. business by a foreign person, a voting interest, direct or indirect, of 25 percent or more, and, in the context of a foreign person in which the national or subnational governments of a single foreign state have an interest, subject to paragraph (b) of this section, a voting interest, direct or indirect, of 49 percent or more.

(b) In the case of entity with a general partner, managing member, or equivalent, the national or subnational governments of a single foreign state will be considered to have a *substantial interest* in such entity only if they hold 49 percent or more of the interest in the general partner, managing member, or equivalent of the entity.

(c) For purposes of determining the percentage of voting interest held indirectly by one entity in another entity, any voting interest of a parent will be deemed to be a 100 percent voting interest in any entity of which it is a parent.

(d) Examples:

(1) *Example 1.* Corporation A, a foreign person, plans to acquire a 30 percent voting interest in Corporation X, an unaffiliated TID U.S. business. Corporation B holds 51 percent of the voting interest in, and is a parent of, Corporation A. A foreign government holds 75 percent of the voting interest in Corporation B, and private, non-government controlled individuals hold the remaining 25 percent. Under paragraph (c) of this section, Corporation B is deemed to have 100 percent of the voting interest in Corporation A because it is Corporation A's parent, and therefore the foreign government's indirect voting interest in Corporation A is imputed to be 75 percent. Corporation A is acquiring a substantial interest in Corporation X, and a foreign government has a substantial interest in Corporation A.

(2) *Example 2.* Same facts as the example in paragraph (d)(1) of this section, except that Corporation B holds only 49 percent of the voting interest in Corporation A and is not Corporation A's parent. Because Corporation B is not a parent of Corporation A, paragraph (c) of this section is not applicable. The foreign government's indirect voting interest in Corporation A for purposes of this section is only 36.75 percent. Corporation A is acquiring a substantial interest in Corporation X; however, the foreign government does not have a substantial interest in Corporation A.

§ 800.245 Substantive decisionmaking.

(a) The term *substantive decisionmaking* means the process through which decisions regarding significant matters affecting an entity are undertaken, including, as applicable:

(1) Pricing, sales, and specific contracts, including the license, sale, or transfer of sensitive personal data to any third party, including pursuant to a customer, vendor, or joint venture agreement;

(2) Supply arrangements;

(3) Corporate strategy and business development;

(4) Research and development, including location and budget allocation;

(5) Manufacturing locations;

(6) Access to critical technologies, covered investment critical infrastructure, material nonpublic technical information, or sensitive personal data, including pursuant to a customer, vendor, or joint venture agreement;

(7) Physical and cyber security protocols, including the storage and protection of critical technologies, covered investment critical infrastructure, or sensitive personal data;

(8) Practices, policies, and procedures governing the collection, use, or storage of sensitive personal data, including:

(i) The establishment or maintenance of, or changes to, the architecture of information technology systems and networks used in collecting or maintaining sensitive personal data; or

(ii) Privacy policies and agreements for individuals from whom sensitive personal data is collected setting forth parameters regarding whether and how sensitive personal data may be collected, maintained, accessed, or disseminated; or

(9) Strategic partnerships.

(b) The term *substantive decisionmaking* does not include strictly administrative decisions.

(c) Examples:

(1) *Example 1.* Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is an unaffiliated TID U.S. business that operates a container terminal at a strategic seaport within the National Port Readiness Network (Terminal B). Pursuant to the terms of the investment, Corporation A will have approval rights over which customers may utilize Terminal B. The proposed investment therefore affords Corporation A involvement in substantive decisionmaking of Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

(2) *Example 2.* Same facts as the example in paragraph (c)(1) of this section, except that instead of customer approval rights, Corporation A has the right to decide whether to claim certain tax credits with respect to Terminal B on its own income tax filing, which prevents Corporation B from claiming such credits. Assuming no other relevant facts, the proposed investment does not afford Corporation A involvement in substantive decisionmaking of Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

§ 800.246 Supply.

Solely for the purposes of column 2 of appendix A to this part, the term *supply* means to provide third-party physical or cyber security.

§ 800.247 Targets or tailors.

(a) The term *targets or tailors* means customizing products or services for use by a person or group of persons or actively marketing to or soliciting a person or group of persons.

(b) Examples:

(1) *Example 1.* Corporation A, a U.S. business, operates facilities throughout the United States that offer healthcare-related products and services. Some of Corporation A's facilities are located within metropolitan

areas that also include U.S. military facilities. Assuming no other relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

(2) *Example 2.* Same facts as the example in paragraph (b)(1) of this section, except that Corporation A operates a facility on the premises of a U.S. military facility. Corporation A targets or tailors its products or services for purposes of § 800.241(a)(1)(i)(A).

(3) *Example 3.* Corporation A, a U.S. business, offers a discount to all customers that are employed in the public sector broadly, including active duty U.S. military personnel. Assuming no other relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

(4) *Example 4.* Same facts as the example in paragraph (b)(3) of this section, except that Corporation A offers a discount solely to uniformed U.S. military personnel and distributes marketing materials that promote the particular usefulness of Corporation A's products to military personnel. Corporation A targets or tailors its products or services for purposes of § 800.241(a)(1)(i)(A).

§ 800.248 TID U.S. business.

The term *TID U.S. business* means any U.S. business that:

(a) Produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies;

(b) Performs the functions as set forth in column 2 of appendix A to this part with respect to covered investment critical infrastructure; or

(c) Maintains or collects, directly or indirectly, sensitive personal data of U.S. citizens.

(d) Examples:

(1) *Example 1.* Corporation A, a U.S. business, operates a munitions plant in the United States that produces a variety of military grade explosives. Some of the explosives manufactured by Corporation A are listed on the USML. Corporation A manufactures critical technologies and is therefore a TID U.S. business.

(2) *Example 2.* Corporation A, a U.S. business, produces an item (Item A) by purchasing various components from third-party suppliers and integrating them into Item A. One of these components (Component X) is a critical technology, but Item A is not a critical technology. Before integrating Component X into Item A, Corporation A merely verifies the fit and form of Component X solely as part of Item A. Assuming no other relevant facts, Corporation A does not test critical technologies and is therefore not a TID U.S. business.

(3) *Example 3.* Corporation A is a U.S. business that owns intellectual property rights and equipment for manufacturing a critical technology and maintains the know-how to manufacture that critical technology. It has been six months since Corporation A manufactured the critical technology. Because Corporation A retains the ability to manufacture the critical technology, Corporation A is a TID U.S. business.

(4) *Example 4.* Facility A is a crude oil storage facility with the capacity to hold 50 million barrels of crude oil. Corporation A is a U.S. business that operates Facility A. Corporation B is a U.S. business that provides third-party physical security to Facility A by guarding the gate to Facility A and patrolling the fence surrounding Facility A. Corporation C produces the fencing used by Facility A. Corporation D produces the commercially available off-the-shelf cyber security software utilized in Facility A. Corporation E provides third-party cyber security to Facility A by running Facility A's cyber security defenses. Facility A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A, Corporation B, and Corporation E each perform one of the functions as set forth in column 2 of appendix A to this part with respect to Facility A, and each is therefore a TID U.S. business. Assuming no other relevant facts, neither Corporation C nor Corporation D performs one of the functions as set forth in column 2 of appendix A to this part with respect to Facility A, and neither is therefore a TID U.S. business.

(5) *Example 5.* Pipeline A is an interstate natural gas pipeline with an outside diameter of 36 inches. Corporation A is a U.S. business that owns Pipeline A. Corporation B is a U.S. business that manufactures the pipe segments with an outside diameter of 36 inches that are used in Pipeline A. Pipeline A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A performs one of the functions as set forth in column 2 of appendix A to this part with respect to Pipeline A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to Pipeline A and is therefore not a TID U.S. business.

(6) *Example 6.* IXP A is an internet exchange point that supports public peering. Corporation A is a U.S. business that operates IXP A. Corporation B is a U.S. business that maintains the physical premises of IXP A. IXP A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A performs one of the functions as set forth in column 2 of appendix A to this part with respect to IXP A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to IXP A and is therefore not a TID U.S. business.

(7) *Example 7.* SCADA System A is a supervisory control and data acquisition system utilized by a public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), that regularly serves 15,000 individuals. Corporation A is a U.S. business that produces SCADA System A by building the hardware and integrating all the software. Corporation B is a U.S. business that produces commercially available off-the-shelf software that is sold to Corporation A and used as a component in SCADA System A. SCADA System A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A, as the manufacturer of SCADA System A, performs one of the functions as set forth in column 2 of appendix A to this part with respect to SCADA System A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to SCADA System A and is therefore not a TID U.S. business.

(8) *Example 8.* Same facts as the example in paragraph (d)(7) of this section. Corporation B later releases a patch that updates the commercially available off-the-shelf software that is a component of SCADA System A. As the software is only a component of SCADA System A, the software itself is not covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to SCADA System A and is therefore not a TID U.S. business.

(9) *Example 9.* Alloy A is a steel alloy containing two percent manganese. Corporation A is a U.S. business that manufactures Alloy A in Facility A by melting the constituent metals. Facility A is in the United States. Corporation B is a U.S. business that purchases Alloy A from Corporation A and resells it to a prime contractor of the Department of Defense. Facility A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A performs one of the functions as set forth in column 2 of appendix A to this part with respect to Alloy A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to Alloy A and is therefore not a TID U.S. business.

(10) *Example 10.* Corporation A, a U.S. business, is a credit reporting agency and maintains consumer reports meeting the description under § 800.241(a)(1)(ii)(B) on greater than one million individuals, including U.S. citizens. Corporation A maintains sensitive personal data and is therefore a TID U.S. business.

(11) *Example 11.* Same facts as the example in paragraph (d)(10) of this section, except that Corporation A maintains the sensitive personal data through its wholly-owned subsidiary, Corporation X. Corporation A is a TID U.S. business because it indirectly maintains sensitive personal data. Corporation X is also a TID U.S. business because it directly maintains sensitive personal data.

(12) *Example 12.* Corporation A, a U.S. business, manufactures and sells specialty medical devices to patients with various health conditions. Corporation A solicits certain patient medical information on its five million customers, including U.S. citizens, which is sensitive personal data under § 800.241(a)(1)(ii)(D), for R&D,

marketing, and quality assurance purposes. However, Corporation A does not directly maintain or collect this information, but instead outsources this function to a third party, Corporation X, which collects the data according to Corporation A's instructions and maintains the data on Corporation X's corporate servers for Corporation A to access. Corporation A is a TID U.S. business because it indirectly maintains and collects sensitive personal data, and Corporation X is a TID U.S. business because it directly maintains and collects sensitive personal data.

§ 800.249 Transaction.

The term *transaction* means any of the following, whether proposed or completed:

(a) A merger, acquisition, or takeover, including:

(1) The acquisition of an ownership interest in an entity;

(2) The acquisition of proxies from holders of a voting interest in an entity;

(3) A merger or consolidation;

(4) The formation of a joint venture; or

(5) A long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner;

(b) An investment; or

(c) The conversion of a contingent equity interest.

(d) Example: Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

Note 1 to § 800.249: See § 800.308 regarding factors the Committee will consider in determining whether to include the access, rights, or involvement to be acquired by a foreign person upon the conversion of contingent equity interests as part of the Committee's analysis of whether a transaction that involves such interests is a covered transaction.

§ 800.250 Unaffiliated TID U.S. business.

The term *unaffiliated TID U.S. business* means, with respect to a foreign person, a TID U.S. business in which that foreign person does not directly hold more than 50 percent of the outstanding voting interest or have the right to appoint more than half of the members of the board of directors or equivalent governing body.

§ 800.251 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the territorial sea of the United States. For purposes of these regulations and their examples in this part, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized ''in the United States.''

§ 800.252 U.S. business.

(a) The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States.

(b) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Corporation A and its branch or subsidiary are each also a foreign person.

(2) *Example 2.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. It also provides remote technical support services to customers that are in the United States, but does not have any assets or personnel located in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

(3) *Example 3.* Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

§ 800.253 U.S. national.

The term *U.S. national* means an individual who is a U.S. citizen or an individual who, although not a U.S. citizen, owes permanent allegiance to the United States.

§ 800.254 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 800.301 Transactions that are covered control transactions.

Transactions that are covered control transactions include:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person. (See the examples in paragraphs (e)(1), (2), and (3) of this section.)

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person. (See the example in paragraph (e)(4) of this section.)

(c) A transaction that results or could result in control by a foreign person of any part of an entity or of assets, if such part of an entity or assets constitutes a U.S. business. (See § 800.302(c) and the examples in paragraphs (e)(5) through (14) of this section.)

(d) A joint venture in which the parties enter into a contractual or other similar arrangement, including an agreement on the establishment of a new entity, but only if one or more of the parties contributes a U.S. business and a foreign person could control that U.S. business by means of the joint venture. (See the examples in paragraphs (e)(15) through (17) of this section.)

(e) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation X, and those directors will have the right to make decisions about the closing and relocation of particular production facilities and the termination of significant contracts. The directors also will have the right to propose to Corporation A, the sole shareholder, the dissolution of Corporation X and the sale of its principal assets. The proposed transaction is a covered control transaction.

(2) *Example 2.* Same facts as the example (e)(1) of this section, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals. Although Corporation A may choose not to exercise its power to elect new directors for Corporation X, Corporation A nevertheless will have that exercisable power. The proposed transaction is a covered control transaction.

(3) *Example 3.* Corporation A, a foreign person, proposes to purchase 50 percent of

the voting shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. The governance documents of Corporation X provide that important decisions require the affirmative vote of more than half of the votes cast. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for 10 years. The proposed transaction is a covered control transaction.

(4) *Example 4.* Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is a covered control transaction because it could result in control of Corporation X, a U.S. business, by another foreign person, Corporation Z.

(5) *Example 5.* Corporation X, a foreign person, has a branch office located in the United States. Corporation A, a foreign person, proposes to buy that branch office. The proposed transaction is a covered control transaction.

(6) *Example 6.* Corporation A, a foreign person, buys a branch office located entirely outside the United States of Corporation Y, which is incorporated in the United States. Assuming no other relevant facts, the branch office of Corporation Y is not a U.S. business, and the transaction is not a covered control transaction.

(7) *Example 7.* Corporation A, a foreign person, makes a start-up, or ''greenfield,'' investment in the United States. That investment involves activities such as the foreign person separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment involves incorporating a newly formed subsidiary of the foreign person. Assuming no other relevant facts, Corporation A will not have acquired a U.S. business, and its greenfield investment is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(8) *Example 8.* Corporation A, a foreign person, intends to make an early-stage investment in a start-up company in the United States. Prior to the investment by the foreign person, the start-up has engaged in interstate commerce, including incorporating, establishing a domain name, hiring personnel, developing business plans, seeking financing, and renting office space, without the involvement of the foreign person. As a result of the investment, Corporation A could control the U.S. business. Corporation A is acquiring a U.S. business and the proposed transaction is a covered control transaction.

(9) *Example 9.* Corporation A, a foreign person, purchases substantially all of the assets of Corporation B. Corporation B, which is incorporated in the United States, was in the business of producing industrial equipment, but stopped producing and selling such equipment one week before Corporation A purchased substantially all of its assets. At the time of the transaction, Corporation B continued to have employees on its payroll, maintained know-how in producing the industrial equipment it previously produced, and maintained relationships with its prior customers, all of which were transferred to Corporation A. Corporation A has acquired a U.S. business and the acquisition is a covered control transaction.

(10) *Example 10.* Corporation X, a foreign person, seeks to acquire from Corporation A, a U.S. business, an empty warehouse facility located in the United States. The acquisition would be limited to the physical facility, and would not include customer lists, intellectual property, or other proprietary information, or other intangible assets or the transfer of personnel. Assuming no other relevant facts, the facility is not an entity and therefore not a U.S. business, and the proposed acquisition of the facility is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this chapter, which addresses certain transactions concerning real estate.

(11) *Example 11.* Same facts as the example in paragraph (e)(10) of this section, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(12) *Example 12.* Corporation A, a foreign person, seeks to acquire from Corporation X, a U.S. business, certain tangible and intangible assets that Corporation X operates as a business in the United States. Corporation A intends to use the assets to establish a business undertaking in a foreign country. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(13) *Example 13.* Corporation A, a foreign person, seeks to acquire from Corporation X, a U.S. business, proprietary software developed by Corporation X. The acquisition would be limited to the software and would not include customer lists, marketing material, or other proprietary information; any other tangible or intangible assets; or the transfer of personnel. Assuming no other relevant facts, the software does not constitute an entity and is therefore not a U.S. business, and the proposed acquisition of the software is not a covered control transaction.

(14) *Example 14.* Same facts as the example in paragraph (e)(13) of this section, except that, in addition to the proposed acquisition of Corporation X's proprietary software, Corporation A would acquire Corporation X's customer lists, advertising and promotional material, branding, trademarks, domain names, and internet presence. Under these facts, Corporation A is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(15) *Example 15.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over matters affecting JV Corporation identified under § 800.208, giving them both control over JV Corporation. The place of incorporation of JV Corporation is not relevant to the determination of whether the transaction is a covered control transaction. The formation of JV Corporation is a covered control transaction.

(16) *Example 16.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain land and equipment that do not in this example constitute a U.S. business. Corporations A and X each have a 50 percent interest in the joint venture. Assuming no other relevant facts, the formation of JV Corporation is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(17) *Example 17.* Same facts as the example in paragraph (e)(16) of this section, except that, in addition to contributing certain land and equipment, Corporation X also contributes intellectual property, other proprietary information, and other intangible assets, that together with the land and equipment constitute a U.S. business, to JV Corporation. Under these facts, Corporation X has contributed a U.S. business, and the formation of JV Corporation is a covered control transaction.

§ 800.302 Transactions that are not covered control transactions.

Transactions that are not covered control transactions include:

(a) A stock split or pro rata stock dividend that does not involve a change in control. See the example in paragraph (f)(1) of this section.

(b) A transaction that results in a foreign person holding 10 percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment. (See § 800.243 and the examples in paragraphs (f)(2) through (4) of this section.)

(c) An acquisition of any part of an entity or of assets, if such part of an entity or assets do not constitute a U.S. business. (See § 800.301(c) and the examples in paragraphs (f)(5) through (10) of this section.)

(d) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(e) An acquisition pursuant to a condition in a contract of insurance

relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

(f) Examples:

(1) *Example 1.* Corporation A, a foreign person, holds 10,000 shares of Corporation B, a U.S. business, constituting 10 percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting 10 percent of the stock of Corporation B. Assuming no other relevant facts, the acquisition of additional shares is not a covered control transaction.

(2) *Example 2.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person, acquires seven percent of the voting securities of Corporation X, which is a U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered control transaction.

(3) *Example 3.* Corporation A, a foreign person, acquires nine percent of the voting shares of Corporation X, a U.S. business. Corporation A also negotiates contractual rights that give it the power to control important matters of Corporation X. The acquisition by Corporation A of the voting shares of Corporation X is not solely for the purpose of passive investment and is a covered control transaction.

(4) *Example 4.* Corporation A, a foreign person, acquires five percent of the voting shares in Corporation B, a U.S. business. In addition to the securities, Corporation A obtains the right to appoint one out of eleven seats on Corporation B's board of directors. The acquisition by Corporation A of Corporation B's securities is not solely for the purpose of passive investment. Whether the transaction is a covered control transaction would depend on whether Corporation A obtains control of Corporation B as a result of the transaction. See § 800.303 for transactions that are covered investments.

(5) *Example 5.* Corporation A, a foreign person, acquires, from separate U.S. nationals products held in inventory, land, and machinery for export. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and this acquisition is not a covered control transaction.

(6) *Example 6.* Corporation X, a U.S. business, produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X under a long-term contract. Assuming no other relevant facts, this transaction is not a covered control transaction.

(7) *Example 7.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation X, a U.S. business, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered control transaction.

(8) *Example 8.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities, customer lists, technology, and staff, which together constitute a U.S. business. This transaction is a covered control transaction.

(9) *Example 9.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered control transaction.

(10) *Example 10.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation A and Corporation X establish a joint venture that will be controlled by Corporation A to manufacture armored personnel carriers outside the United States, and Corporation X contributes assets constituting a U.S. business, including intellectual property and other intangible assets required to manufacture the armored personnel carriers, to the joint venture. Corporation X has contributed a U.S. business to the joint venture, and the establishment of the joint venture is a covered control transaction.

(11) *Example 11.* Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation A and Corporation X enter into a contractual arrangement pursuant to which Corporation A gains the right to purchase an additional interest in Corporation X to prevent the dilution of Corporation A's *pro rata* interest in Corporation X in the event that Corporation X issues additional instruments conveying interests in Corporation X. Corporation A does not acquire any additional rights or ownership interest in Corporation X pursuant to the contractual arrangement. Assuming no other relevant facts, the transaction is not a covered control transaction.

§ 800.303 Transactions that are covered investments.

Transactions that are covered investments include:

(a) A transaction that meets the requirements of § 800.211 irrespective of the percentage of voting interest acquired. (See the examples in paragraphs (d)(1) through (3) of this section.)

(b) A transaction that meets the requirements of § 800.211, irrespective of the fact that the Committee concluded all action under section 721 for a previous covered investment by the same foreign person in the same TID U.S. business, where such transaction involves the acquisition of access, rights, or involvement specified in § 800.211 in addition to those notified to the Committee in the transaction for which the Committee previously concluded action. (See the example in paragraph (d)(4) of this section.)

(c) A transaction that meets the requirements of § 800.211, irrespective of the fact that the critical technology produced, designed, tested, manufactured, fabricated, or developed by the TID U.S. business became controlled under section 1758 of the Export Control Reform Act of 2018 after February 13, 2020, unless any of the criteria set forth in § 800.104(b) are satisfied with respect to the transaction prior to the critical technology becoming controlled. (See the example in paragraph (d)(5) of this section.)

(d) Examples:

(1) *Example 1.* Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an entity in which Corporation A has no voting interests or any rights. Corporation B is a U.S. business that manufactures a critical technology. Corporation B is therefore an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. The proposed transaction is a covered investment.

(2) *Example 2.* Same facts as the example in paragraph (d)(1) of this section, except that, pursuant to the terms of the investment, instead of observer rights, Corporation A has consultation rights with respect to Corporation B's licensing of a critical technology to third parties. Corporation A is therefore involved in substantive decisionmaking with respect to Corporation B, and the proposed transaction is a covered investment.

(3) *Example 3.* Corporation A is a foreign person that is an excepted investor. Corporation B, a foreign person that is not an excepted investor, owns a three percent, non-controlling equity interest in Corporation A. Corporation A proposes to acquire a four percent, non-controlling equity interest in Corporation C, an unaffiliated TID U.S. business. Pursuant to the terms of the investment in Corporation C and Corporation A's governance documents, Corporation A and Corporation B will each have access to material nonpublic technical information in Corporation C's possession. The transaction is a covered investment because Corporation B is making an investment that will result in access to material nonpublic technical information under § 800.211(b).

(4) *Example 4.* The Committee concludes all action under section 721 with respect to a covered investment by Corporation A, a foreign person that is not an excepted investor, in which Corporation A acquires a

four percent, non-controlling equity interest with access to material non-public information in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, resulting in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. Pursuant to the terms of the additional investment, Corporation A will receive the right to appoint a member to the board of directors of Corporation B. The proposed transaction is a covered investment because the transaction involves both an acquisition of an equity interest in an unaffiliated TID U.S. business and a new right under § 800.211.

(5) *Example 5.* Corporation A, a foreign person that is not an excepted investor, has executed a binding written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, an unaffiliated TID U.S. business. The proposed investment will afford Corporation A access to material nonpublic technical information in the possession of Corporation B. The only controlled technology produced, designed, tested, manufactured, fabricated, or developed by Corporation B became controlled under section 1758 of the Export Control Reform Act of 2018 after February 13, 2020, but prior to the date upon which the binding written agreement establishing the material terms of the investment was executed. The proposed transaction is a covered investment.

§ 800.304 Transactions that are not covered investments.

Transactions that are not covered investments include:

(a) An investment by a foreign person in an unaffiliated TID U.S. business that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the examples in paragraphs (f)(1) and (2) of this section.)

(b) An investment by a foreign person who is an excepted investor in an unaffiliated TID U.S. business. (See the example in paragraph (f)(3) of this section.)

(c) A transaction that results or could result in control by a foreign person of an unaffiliated TID U.S. business. (See the example in paragraph (f)(4) of this section.)

(d) A stock split or pro rata stock dividend that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the example in paragraph (f)(5) of this section.)

(e) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(f) Examples:

(1) *Example 1.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person that is not an excepted investor, acquires seven percent of the voting securities of Corporation X, an unaffiliated TID U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered investment.

(2) *Example 2.* The Committee concluded all action under section 721 with respect to a covered investment in which Corporation A, a foreign person that is not an excepted investor, acquired a four percent, non-controlling equity interest with board observer rights in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, which would result in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. The proposed investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including the access, rights, or involvement specified in § 800.211(b). Assuming no other relevant facts, the proposed transaction is not a covered investment.

(3) *Example 3.* Corporation A, a foreign person who is an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment.

(4) *Example 4.* Corporation A, a foreign person who is an excepted investor, proposes to purchase all of the shares of Corporation B, an unaffiliated TID U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment. It is, however, a covered control transaction. Whether Corporation A is an excepted investor and whether Corporation B is an unaffiliated TID U.S. business are not relevant to the determination of whether the transaction is a covered control transaction. (See § 800.301.)

(5) *Example 5.* Corporation A, a foreign person that is not an excepted investor, holds 10,000 shares and board observer rights in Corporation B, an unaffiliated TID U.S. business, constituting 10 percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting 10 percent of the stock of Corporation B. The investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including those specified in § 800.211(b). Assuming no other relevant facts, the acquisition of additional shares is not a covered investment.

§ 800.305 Incremental acquisitions.

(a) Any transaction in which a foreign person acquires an additional interest in, or for which a change in rights of the foreign person occurs with respect to, a U.S. business over which the same foreign person, or any entity that it wholly owns directly or indirectly, previously acquired direct control as a result of a covered control transaction for which the Committee concluded all action under section 721 shall be deemed not to be a covered transaction. If, however, a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

(b) Examples:

(1) *Example 1.* Corporation A, a foreign person, directly acquires a 40 percent voting interest and important rights with respect to Corporation B, a U.S. business. The documentation pertaining to the transaction gives no indication that Corporation A's interest in Corporation B may increase at a later date. Corporation A and Corporation B file a voluntary notice of the transaction with the Committee. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered control transaction, and concludes action under section 721. Three years later, Corporation A acquires the remainder of the voting interest in Corporation B. Assuming no other relevant facts, because the Committee concluded all action with respect to Corporation A's earlier direct acquisition of control in the same U.S. business, and because no other foreign person is a party to this subsequent transaction, this subsequent transaction is not a covered transaction.

(2) *Example 2.* Corporation A, a foreign person that is not an excepted investor, makes a covered investment in Corporation B, an unaffiliated U.S. TID business, pursuant to which Corporation A acquires a five percent non-controlling equity interest in Corporation B that affords it access to material nonpublic technical information of Corporation B. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered investment, and concludes action under section 721. Two years later, Corporation A, in a subsequent investment, acquires an additional five percent non-controlling equity interest in Corporation B, which affords Corporation A the right to appoint one board member of Corporation A. The subsequent investment is a covered investment.

(3) *Example 3.* Same facts as the example in paragraph (b)(1) of this section, except that instead of Corporation A acquiring the remainder of the voting interest in Corporation B three years after the initial acquisition, the remaining 60 percent voting interest is acquired by Corporation X. Corporation X is wholly owned by Corporation Y. Corporation Y also owns 100 percent of Corporation A. The subsequent transaction may be a covered transaction because, while Corporation A and Corporation X are both under common ownership of Corporation Y, Corporation A (the direct acquirer in the initial transaction) does not wholly own Corporation X.

§ 800.306 Lending transactions.

(a) The extension of a loan or a similar financing arrangement by a foreign person to a U.S. business, regardless of whether accompanied by the creation in favor of the foreign person of a secured interest over securities or other assets of the U.S. business, shall not, by itself, constitute a covered transaction.

(1) The Committee will accept notices or declarations concerning a loan or a similar financing arrangement that does not, by itself, constitute a covered transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of a U.S. business, or acquire equity interest and access, rights, or involvement specified in § 800.211(b) over a TID U.S. business, as a result of the default or other condition.

(2) Where the Committee accepts a notice or declaration concerning a loan or a similar financing arrangement under paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions, or day-to-day control over the U.S. business to U.S. nationals or, as applicable, excepted investors for purposes of determining whether such loan or financing arrangement constitutes a covered transaction.

(b) Notwithstanding paragraph (a) of this section, a loan or a similar financing arrangement through which a foreign person acquires an interest in profits of a U.S. business, the right to appoint members of the board of directors of the U.S. business, or other comparable financial or governance rights characteristic of an equity investment but not of a typical loan may constitute a covered transaction.

(c) An acquisition of voting interest in or assets of a U.S. business by a foreign person upon default or other condition involving a loan or a similar financing arrangement does not constitute a covered transaction, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-à-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to:

(i) Control the debtor such that control for purposes of § 800.208 could not be acquired; and

(ii) Exercise any access, rights, or involvement specified in § 800.211(b).

(d) Examples:

(1) *Example 1.* Corporation A, which is a U.S. business, borrows funds from Corporation B, a bank organized under the laws of a foreign state and controlled by foreign persons. As a condition of the loan, Corporation A agrees not to sell or pledge its principal assets to any person. Assuming no other relevant facts, this lending arrangement does not alone constitute a covered transaction.

(2) *Example 2.* Same facts as the example in paragraph (d)(1) of this section, except that Corporation A defaults on its loan from Corporation B and seeks bankruptcy protection. Corporation A has no funds with which to satisfy Corporation B's claim, which is greater than the value of Corporation A's principal assets. Corporation B's secured claim constitutes the only secured claim against Corporation A's principal assets, creating a high probability that Corporation B will receive title to Corporation A's principal assets, which constitute a U.S. business. Assuming no other relevant facts, the Committee would accept a notice of the impending bankruptcy court adjudication transferring control of Corporation A's principal assets to Corporation B, which would constitute a covered control transaction.

(3) *Example 3.* Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation provides Corporation A the right to appoint a majority of the board of directors of Corporation B and the right to be paid dividends by Corporation B. These rights are characteristic of an equity interest but not of a typical loan. Also, as a result of the transaction, under the terms of the loan documentation, Corporation A has the power to determine, direct, or decide important matters affecting Corporation B. This loan is a covered control transaction.

(4) *Example 4.* Corporation A, a foreign bank that is not an excepted investor, makes a loan to Corporation B, an unaffiliated TID U.S. business. The loan documentation provides Corporation A the right to appoint one out of fifteen seats on Corporation B's board of directors and the right to be paid dividends by Corporation B. These rights are characteristic of an equity interest but not of a typical loan. However, assuming no other relevant facts under the terms of the loan documentation, Corporation A does not have the power to determine, direct, or decide important matters affecting Corporation B. This loan is a covered investment.

§ 800.307 Specific clarification for investment funds.

(a) Notwithstanding § 800.303, an indirect investment by a foreign person in a TID U.S. business through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or a committee of the fund shall not be considered a covered investment if:

(1) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(2) The general partner, managing member, or equivalent of the fund is not a foreign person;

(3) The advisory board or committee does not have the ability to approve, disapprove, or otherwise control:

(i) Investment decisions of the investment fund; or

(ii) Decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested;

(4) The foreign person does not otherwise have the ability to control the investment fund, including the authority:

(i) To approve, disapprove, or otherwise control investment decisions of the investment fund;

(ii) To approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested; or

(iii) To unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent;

(5) The foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee; and

(6) The investment does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b).

(b) For the purposes of paragraphs (a)(3) and (4) of this section, and except as provided in paragraph (c) of this section, a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(c) In extraordinary circumstances, the Committee may consider the waiver of a potential conflict of interest, the waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund, to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(d) Example: Limited Partner A, a foreign person, is a limited partner in an investment fund that invests in

Corporation B, an unaffiliated TID U.S. business. The investment fund is managed exclusively by a general partner, who is not a foreign person. The investment affords Limited Partner A membership on an advisory board of the investment fund. The advisory board provides industry expertise, but it does not control investment decisions of the fund or decisions made by the general partner related to entities in which the fund is invested. Limited Partner A does not otherwise have the ability to control the fund. Limited Partner A's investment in Corporation B does not afford it access to any material nonpublic technical information in the possession of Corporation B, the right to be a member or observer, or to nominate a member or observer, to the board of Corporation B, nor any involvement in the substantive decisionmaking of Corporation B. Assuming no other facts, the indirect investment by Limited Partner A is not a covered investment.

§ 800.308 Timing rule for a contingent equity interest.

(a) For purposes of determining whether to include the rights that a holder of a contingent equity interest will acquire upon conversion of, or exercise of a right provided by, that interest in the Committee's analysis of whether a notified transaction is a covered transaction, the Committee will consider factors that include:

(1) The imminence of conversion or satisfaction of contingent conditions;

(2) Whether conversion or satisfaction of contingent conditions depends on factors within the control of the acquiring party; and

(3) Whether the amount of interest and the rights that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction of contingent condition will not be included in the Committee's analysis of whether a notified or submitted transaction is a covered transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

(c) Examples:

(1) *Example 1.* Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so inform the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

(2) *Example 2.* Same facts as the example in paragraph (c)(1) of this section, except that the debentures at issue are convertible at the sole discretion of Corporation A after six months, and if converted, would represent a 50 percent interest in Corporation X. The Committee may consider the rights that would result from the conversion as part of its analysis.

Subpart D—Declarations

§ 800.401 Mandatory declarations.

(a) Except as provided in paragraph (d), (e), or (f) of this section, the parties to a transaction described in paragraph (b) or (c) of this section shall submit to the Committee a declaration with information regarding the transaction in accordance with § 800.403.

(b) A covered transaction that results in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which the national or subnational governments of a single foreign state (other than an excepted foreign state) have a substantial interest.

(c) A covered transaction that is a covered investment in, or that could result in foreign control of, a TID U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies:

(1) Utilized in connection with the TID U.S. business's activity in one or more industries identified in appendix B to this part by reference to the North American Industry Classification System (NAICS); or

(2) Designed by the TID U.S. business specifically for use in one or more industries identified in appendix B to this part by reference to the NAICS, regardless of whether the critical technology also has application for other industries. (See the example in paragraph (j)(1) of this section.)

(d) The submission of a declaration shall not be required under paragraph (b) of this section with respect to:

(1) A covered transaction by an investment fund if:

(i) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(ii) The general partner, managing member, or equivalent is not a foreign person; and

(iii) The investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in § 800.307(a)(3) and (4) (See the examples in paragraphs (j)(2) and (3) of this section); or

(2) A covered control transaction involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102.

(e) The submission of a declaration shall not be required under paragraph (c) of this section with respect to:

(1) A covered control transaction by an excepted investor;

(2) A covered transaction in which the foreign person's indirect investment in the TID U.S. business is held solely and directly via an entity that as of the completion date is:

(i) Subject to a security control agreement, special security agreement, voting trust agreement, or proxy agreement approved by a cognizant security agency to offset foreign ownership, control, or influence pursuant to the National Industrial Security Program regulations (32 CFR part 2004); and

(ii) Operating under a valid facility security clearance pursuant to the National Industrial Security Program regulations (32 CFR part 2004);

(3) A covered transaction by an investment fund if:

(i) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(ii) The general partner, managing member, or equivalent is:

(A) Ultimately controlled exclusively by U.S. nationals; or

(B) Not a foreign person; and

(iii) The investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in § 800.307(a)(3) and (4) (See the examples in paragraphs (j)(2) and (3) of this section);

(4) An investment that is a covered investment solely due to the application of § 800.219(d); or

(5) A covered control transaction involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102.

(6) A covered transaction that is a covered investment in, or that could

result in foreign control of, a U.S. business that is a TID U.S. business solely because such TID U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies that is-eligible for export, reexport, or transfer (in country) pursuant to License Exception ENC of the EAR (15 CFR 740.17);

(f) Notwithstanding paragraph (a) of this section, parties to a covered transaction may elect to submit a written notice under subpart E of this part regarding the transaction instead of a declaration.

(g) Parties shall submit to the Committee the declaration required under paragraph (a) of this section, or a written notice under paragraph (f) of this section, no later than:

(1) February 13, 2020, or promptly thereafter, if the completion date of the transaction is between February 13, 2020 and March 14, 2020; or

(2) Thirty days before the completion date of the transaction, if the completion date of the transaction is after March 14, 2020.

(h) Notwithstanding paragraph (g) of this section, the parties to a covered transaction may complete a transaction subject to a mandatory declaration or notice under this section at any time after having been informed in writing by the Committee that the Committee has concluded all action under section 721 or that the Committee is not able to complete action under § 800.407(a)(2).

(i) In the event that the Committee rejects or permits a withdrawal of a declaration or notice required under this section, the parties shall not complete the transaction earlier than 30 days after the date of the resubmission, except with the written approval of the Staff Chairperson.

(j) Examples:

(1) *Example 1.* Corporation A, a foreign person that is not an excepted investor and in which no foreign government has a substantial interest, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S. business that manufactures a critical technology. Under the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Corporation B manufactures the critical technology for commercial off-the-shelf use by businesses in various industries, including some identified in appendix B to this part. Assuming no other relevant facts, the proposed transaction is a covered investment, but is not subject to a mandatory declaration or notice under § 800.401 because Corporation B does not produce, design, test, manufacture, fabricate, or develop the critical technology specifically for use in one or more industries identified in appendix B to this part.

(2) *Example 2.* Investment Fund A, a foreign person that is not an excepted investor, acquires a 10 percent equity interest in Corporation A, an unaffiliated TID U.S. business, and the right to appoint one member of Corporation A's board of directors. Corporation A is manufacturing critical technologies utilized in Corporation A's activity in one or more industries identified in appendix B to this part. Investment Fund A satisfies the requirements under paragraph (e)(3) of this section. Investment Fund A's investment in Corporation A is a covered investment, but the transaction is not subject to the mandatory declaration requirement.

(3) *Example 3.* Same facts as the example in paragraph (j)(2) of this section, except that in connection with Investment Fund A's transaction, Limited Partner X, a limited partner of Investment Fund A and a foreign national that is not an excepted investor, receives access to the material non-public technical information of Corporation A. Limited Partner X's indirect investment in Corporation A is a covered investment. While Investment Fund A's direct investment is not subject to a mandatory declaration, Limited Partner X's indirect investment in Corporation A is subject to a mandatory declaration.

§ 800.402 Voluntary declarations.

Except as otherwise prohibited under § 800.403(e), a party to any proposed or completed transaction may submit to the Committee a declaration regarding the transaction in accordance with the procedures and requirements set forth in §§ 800.403 and 800.404 instead of a written notice.

§ 800.403 Procedures for declarations.

(a) A party or parties submitting a declaration of a transaction under § 800.401 or § 800.402 shall submit electronically the information set out in § 800.404, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website.

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee under this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances regarding the transaction, and any material change in information provided or required to be provided to the Committee under § 800.404. Unless the Committee rejects the declaration on the basis of such material changes in accordance with § 800.406(a)(2)(i), such changes shall become part of the declaration filed by such persons under this section, and the certification required under § 800.405(d) shall apply to such changes.

(e) Parties to a transaction that have filed with the Committee a written notice regarding a transaction under § 800.501 or § 802.501 or a declaration under § 802.401 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the written approval of the Staff Chairperson.

§ 800.404 Contents of declarations.

(a) The party or parties submitting a declaration of a transaction under § 800.403 shall provide the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraphs (d) and (e) of this section.)

(b) If fewer than all parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 800.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted under § 800.403 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and U.S. business(es) that are parties to, or, in applicable cases, the subject of, the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

(2) The following information regarding the transaction in question:

(i) A brief description of the rationale for and nature of the transaction, including its structure (*e.g.,* share purchase, merger, asset purchase);

(ii) The percentage of voting interest acquired and the resulting aggregate voting interest held by the foreign person and its affiliates;

(iii) The percentage of economic interest acquired and the resulting aggregate economic interest held by the foreign person and its affiliates;

(iv) Whether the U.S. business has multiple classes of ownership, and if so, the pre- and post-transaction share

ownership of the foreign person(s) in the U.S. business broken out by class;

(v) The total transaction value in U.S. dollars;

(vi) The status of the transaction, including the actual or expected completion date of the transaction;

(vii) All sources of financing for the transaction; and

(viii) A copy of the definitive documentation of the transaction, or if none exists, the document establishing the material terms of the transaction.

(3) The following:

(i) A statement as to whether a party to the transaction is stipulating that the transaction is a covered transaction and a description of the basis for the stipulation; and

(ii) A statement as to whether a party to the transaction is stipulating that the transaction is a foreign government-controlled transaction and a description of the basis for the stipulation.

(4) A statement as to whether the foreign person will acquire any of the following with respect to the U.S. business:

(i) Access to any material nonpublic technical information in the possession of the U.S. business, and if so, a brief explanation of the access and type of information;

(ii) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a statement as to the composition of the board or other body both before and after the completion date of the transaction;

(iii) Any involvement, other than through voting of shares, in substantive decisionmaking of the U.S. business regarding covered investment critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3), and if any, a statement as to the involvement in such substantive decisionmaking; or

(iv) Any rights that could result in the foreign person acquiring control of the U.S. business and, if any, a brief explanation of these rights.

(5) The following information regarding the U.S. business:

(i) Website address;

(ii) Principal place of business;

(iii) Place of incorporation or organization; and

(iv) A list of the addresses or geographic coordinates (to at least the fourth decimal) of all locations of the U.S. business, including the U.S. business' headquarters, facilities, and operating locations.

(6) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent, a brief summary of their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including the applicable six-digit North American Industry Classification System (NAICS) Codes, Commercial and Government Entity Code (CAGE Code) assigned by the Department of Defense, and any applicable Dun and Bradstreet identification (DUNS) numbers assigned to the U.S. business, and an explanation of how the entity is engaged in interstate commerce in the United States, where applicable.

(7) A statement as to whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.

(8) A statement as to whether the U.S. business performs any of the functions with respect to covered investment critical infrastructure as set forth in column 2 of appendix A to this part.

(9) A statement as to whether the U.S. business directly or indirectly maintains or collects sensitive personal data of U.S. citizens, directly or indirectly has collected or maintained sensitive personal data in the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B), or has a demonstrated business objective to collect such data in the future.

(10) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past three years with any U.S. Government agency or component, or in the past 10 years if the contract included access to personally identifiable information of U.S. Government personnel. If so, provide an annex listing such contracts, including the name of the U.S. Government agency or component, the delivery order number or contract number, the primary contractor (if the U.S. business is a subcontractor), the start date, and the estimated completion date.

(11) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past five years involving information, technology, or data that is classified under Executive Order 12958, as amended.

(12) A statement as to whether the U.S. business has received any grant or other funding from the Department of Defense or the Department of Energy, or participated in or collaborated on any defense or energy program or product involving one or more critical technologies, covered investment critical infrastructure, or other critical infrastructure within the past five years.

(13) A statement as to whether the U.S. business participated in a Defense Production Act Title III Program (50 U.S.C. 4501 *et seq.*) within the past seven years.

(14) A statement as to whether the U.S. business has received or placed priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700), and the level(s) of priority of such contracts or orders (''DX'' or ''DO'') within the past three years.

(15) The name of the ultimate parent of the foreign person.

(16) The address of the foreign person and its ultimate parent.

(17) Complete organizational charts, both pre- and post-transaction, including information that identifies the name, principal place of business, and place of incorporation or other legal organization (for entities); nationality (for individuals); and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent;

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent; and

(iv) The U.S. business that is the subject of the transaction, both before and after completion of the transaction.

(18) Information regarding all foreign government ownership in the foreign person's ownership structure, including nationality and percentage of ownership, as well as any rights that a foreign government holds, directly or indirectly, with respect to the foreign person.

(19) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities, as, for example, set forth in annual reports.

(20) A statement as to whether any party to the transaction has been party to another transaction previously notified or submitted to the Committee, and the case number assigned by the Committee regarding such transaction(s).

(21) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the U.S. business, the foreign person, any parent of the foreign person, or any person of which the foreign person is a parent has been convicted in the last 10 years of a crime in any jurisdiction.

(22) If applicable, a description (which may group similar items into general product categories) of any critical technology that the U.S. business produces, designs, tests, manufactures, fabricates, or develops, and a list of any relevant Export Control Classification Numbers (ECCNs) under the EAR and the USML categories under the ITAR, and, if applicable, identify whether there are specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810; nuclear facilities, equipment, and materials covered by 10 CFR part 110; or select agents and toxins covered by 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73.

(23) If applicable, a statement as to which functions set forth in column 2 of appendix A to this part that the U.S. business performs with respect to covered investment critical infrastructure, including a description of such functions and the applicable covered investment critical infrastructure.

(24) If applicable:

(i) The category or categories of data, as specified at § 800.241, that the U.S. business directly or indirectly maintains or collects;

(ii) For each applicable category of data specified in § 800.241, individually and in the aggregate, the approximate number of total unique persons from whom:

(A) The data is currently maintained, and

(B) The data has been maintained or collected at any point during the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B);

(iii) Whether the U.S. business has a demonstrated business objective to maintain or collect data described in § 800.241(a)(1)(ii) of greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services.

(iv) Whether the U.S. business targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel or contractors thereof.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(e) A party that offers a stipulation under paragraph (c)(3) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered investment, a covered control transaction, or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

§ 800.405 Beginning of 30-day assessment period.

(a) Upon receipt of a declaration submitted under § 800.403, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

(1) The Staff Chairperson has accepted the declaration and circulated the declaration to the Committee, and the date on which the assessment described in paragraph (b) of this section begins; or

(2) The Staff Chairperson has determined not to accept the declaration and circulate the declaration to the Committee because the declaration is incomplete, and an explanation of the material respects in which the declaration is incomplete.

(b) A 30-day period for assessment of a covered transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) During the 30-day assessment period, the Staff Chairperson may invite the parties to a covered transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction.

(d) If the Committee notifies the parties to a transaction that have submitted a declaration under § 800.403 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(e) If a party fails to provide the certification required under paragraph (d) of this section, the Committee may, at its discretion, take any of the actions under § 800.407.

§ 800.406 Rejection, disposition, or withdrawal of declarations.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any declaration that does not comply with § 800.404 and so inform the parties promptly in writing;

(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 800.407:

(i) There is a material change in the covered transaction as to which a declaration has been submitted; or

(ii) Information comes to light that contradicts material information provided in the declaration by the party (or parties); or

(3) Reject any declaration at any time after the declaration has been submitted, and so inform the parties promptly in writing, if the party (or parties) that submitted the declaration does not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the party (or parties) so request in writing and the Staff Chairperson grants that request in writing.

(b) The Staff Chairperson shall notify the party (or parties) that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a covered transaction.

(c) Parties to a transaction that have submitted a declaration under § 800.403 may request in writing, at any time prior to the Committee taking action under § 800.407, that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(d) The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a covered transaction to correct material errors or omissions, or describe material changes to the transaction, in the declaration submitted with respect to that covered transaction.

(e) A party (or parties) may not submit more than one declaration for the same or a substantially similar transaction

without approval from the Staff Chairperson.

Note 1 to § 800.406: See § 800.403(e) regarding the prohibition on submitting a declaration regarding the same transaction or a substantially similar transaction for which a written notice has been filed without the approval of the Staff Chairperson.

§ 800.407 Committee actions.

(a) Upon receiving a declaration submitted under § 800.403 with respect to a covered transaction, the Committee may, at the discretion of the Committee:

(1) If the Committee has reason to believe that the transaction may raise national security considerations, request that the parties to the transaction file a written notice under subpart E;

(2) Inform the parties to the transaction that the Committee is not able to conclude action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice under subpart E to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction;

(3) Initiate a unilateral review of the transaction under § 800.501(c); or

(4) Notify the parties in writing that the Committee has concluded all action under section 721 with respect to the transaction.

(b) The Committee shall take action under paragraph (a) of this section within the time period set forth in § 800.405(b).

Subpart E—Notices

§ 800.501 Procedures for notices.

(a) Except as otherwise prohibited under paragraph (j) of this section, a party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 800.502, including the certification required under paragraph (l) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under this part, and with respect to which the Committee has not informed the parties in writing that the Committee has concluded all action under section 721, may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice of such covered transaction under paragraph (a) of this section.

(c) With respect to any transaction:

(1) Any member of the Committee, or his or her designee at or above the Under Secretary or equivalent level, may, subject to paragraph (c)(2) of this section, file an agency notice to the Committee through the Staff Chairperson regarding a transaction if:

(i) That member has reason to believe that the transaction is a covered transaction and may raise national security considerations and:

(A) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(B) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; or

(ii) The transaction is a covered transaction and:

(A) The Committee has informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction or determined that such transaction is not a covered transaction, or the President has announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; and

(B) Either:

(*1*) A party to such transaction submitted false or misleading material information to the Committee in connection with the Committee's consideration of such transaction or omitted material information, including material documents, from information submitted to the Committee; or

(*2*) A party to or the entity resulting from consummation of such transaction materially breaches (or, if the review or investigation of such transaction was initiated under section 721 before August 13, 2018, intentionally materially breaches) a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach (or, if the review or investigation of such transaction was initiated under section 721 before August 13, 2018, an intentional material breach), and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is an investment where a foreign person is not an excepted investor due to the application of § 800.219(d), any member of the Committee, or his or her designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such investment if:

(A) That member has reason to believe that the transaction is a covered transaction and may raise national security considerations;

(B) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(C) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction.

(ii) No notice filed under this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 800.219(a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii), the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

(d) Notices filed under paragraph (c) of this section are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under paragraph (c)(1) of this section shall be made with respect to a transaction more than three years after the completion date of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(e) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(f) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 800.502(l), the Staff Chairperson shall promptly inspect such notice for completeness.

(g) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice

and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee under this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

(h) Information and other documentary material provided by the parties to the Committee after the filing of a voluntary notice under this section shall be part of the notice, and shall be subject to the final certification required under § 800.502(m).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation under section § 800.502(o) that a transaction is a covered transaction, the Committee shall provide comments on the draft or formal written notice or accept the formal written notice of a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(j) No party to a transaction may file a notice under paragraph (a) of this section if the transaction has been the subject of a declaration submitted under subpart D and the Committee has not yet taken action with respect to the transaction under § 800.407.

§ 800.502 Contents of voluntary notices.

(a) If the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraph (l) of this section and § 800.204 regarding certification requirements.)

(b) If fewer than all parties to a transaction file a voluntary notice, for example in the case of a hostile takeover, each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(c) A voluntary notice filed under § 800.501 shall describe or provide, as applicable:

(1) The following information regarding the transaction in question:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States;

(ii) The nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interest, or otherwise;

(iii) The name, United States address (if any), website address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the U.S. business that is the subject of the transaction;

(v) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vi) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of each person that will control the U.S. business being acquired;

(vii) The actual or expected completion date of the transaction;

(viii) A good faith approximation of the net value of the interest acquired in the U.S. business in U.S. dollars, as of the date of the notice;

(ix) The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or sources of financing for the transaction;

(x) A copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction;

(xi) A statement as to whether the foreign person will acquire any of the following in the U.S. business:

(A) Access to any material nonpublic technical information in the possession of the U.S. business, and if so, a brief explanation of the type of access and type of information;

(B) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a description of such rights and a statement as to the composition of the board or other body both before and after the completion date of the transaction, as well as a copy of the document(s) setting forth the post-acquisition governance provisions (*e.g.,* quorum requirements, special rights) for the board of directors or other body;

(C) Any involvement, other than through voting of shares, in substantive decisionmaking of the U.S. business regarding covered investment critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3), and if so, a brief explanation of the nature and extent of involvement;

(2) With respect to a transaction structured as an acquisition of assets of a U.S. business, a detailed description of the assets of the U.S. business being acquired, including the approximate value of those assets in U.S. dollars;

(3) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent (unless that entity is excluded from the scope of the transaction):

(i) Their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including an estimate of U.S. market share for such product or service categories and the methodology used to determine market share, a list of direct competitors for those primary product or service categories, and their NAICS Code, if any, and an explanation of how the entity is engaged in interstate commerce in the United States, where applicable;

(ii) The street address (and mailing address, if different) within the United States and website address (if any) of each facility that is manufacturing classified or unclassified products or producing services described in paragraph (c)(3)(v) of this section, and their respective CAGE Codes and DUNS number;

(iii) Each contract (identified by agency and number) that is currently in effect or was in effect within the past five years with any agency of the U.S. Government involving any information, technology, or data that is classified under Executive Order 12958, as amended, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(iv) Any other contract (identified by agency and number) that is currently in effect or was in effect within the past three years with any U.S. Government agency or component with national defense, homeland security, or other

national security responsibilities, including law enforcement responsibility as it relates to defense, homeland security, or national security, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development):

(A) That it supplies, directly or indirectly, to any agency of the U.S. Government, including as a prime contractor or first tier subcontractor, a supplier to any such prime contractor or subcontractor, or, if known by the parties filing the notice, a subcontractor at any tier; and

(B) If known by the parties filing the notice, for which it is a single qualified source (*i.e.,* other acceptable suppliers are readily available to be so qualified) or a sole source (*i.e.,* no other supplier has needed technology, equipment, and manufacturing process capabilities) for any such agencies and whether there are other suppliers in the market that are available to be so qualified;

(vi) Any products or services (including research and development) that:

(A) It supplies to third parties and it knows are rebranded by the purchaser or incorporated into the products of another entity, and the names or brands under which such rebranded products or services are sold; and

(B) In the case of services, it provides on behalf of, or under the name of, another entity, and the name of any such entities;

(vii) For the prior three years—

(A) A list of priority rated contracts or orders under DPAS) regulation that the U.S. business that is the subject of the transaction has received and the level of priority of such contracts or orders (''DX'' or ''DO''); and

(B) A list of such priority rated contracts or orders that the U.S. business has placed with other entities and the level of priority of such contracts or orders, and the acquiring party's plan to ensure that any new entity formed at the completion of the notified transaction (or the U.S. business, if no new entity is formed) complies with the DPAS regulations;

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business's services, networks, systems, data storage (including the collection or maintenance of sensitive personal data), and facilities;

(ix) A description of whether the U.S. business performs any of the functions with respect to covered investment critical infrastructure, if any, as set forth in column 2 of appendix A to this part. This statement shall include a description of such functions, including the applicable covered investment critical infrastructure;

(x)(A) A description of whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more:

(*1*) Items that are subject to the EAR and, if so, a description (which may group similar items into general product categories) of the items and a list of the relevant commodity classifications set forth on the CCL (*i.e.,* ECCNs or EAR99 designation);

(*2*) Defense articles and defense services, and related technical data covered by the USML in the ITAR, and, if so, the category of the USML; articles and services for which commodity jurisdiction requests (22 CFR 120.4) are pending; and articles and services (including those under development) that may be designated or determined in the future to be defense articles or defense services under 22 CFR 120.3;

(*3*) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810;

(*4*) Nuclear facilities, equipment, and material covered by 10 CFR part 110;

(*5*) Select Agents and Toxins (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73); or

(*6*) Emerging and foundational technologies controlled under section 1758 of the Export Control Reform Act of 2018 (codified at 50 U.S.C. 4817);

(B) A description of whether the U.S. business otherwise trades in any item described in paragraphs (c)(3)(x)(A)(*1*) through (*6*) of this section, to the extent not addressed in the voluntary notice in response to paragraph (c)(3)(x)(A) of this section; and

(C) For any item described in paragraphs (c)(3)(x)(A)(*1*) through (*6*) of this section for which there is no completed Commodity Classification Automated Tracking System or Commodity Jurisdiction determination, the voluntary notice shall include a brief statement as to how the parties evaluated the item (*e.g.,* self-classification by individuals with technical knowledge at the U.S. business, classification information provided by the manufacturer, classification provided by outside counsel or third party consultant, *etc.*);

(xi) A description of whether the U.S. business directly or indirectly maintains or collects sensitive personal data of U.S. citizens, directly or indirectly has collected or maintained sensitive personal data in the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B), or has a demonstrated business objective to maintain or collect such data in the future including:

(A) The category or categories of data specified in § 800.241 that the U.S. business directly or indirectly maintains or collects or intends to maintain or collect;

(B) For each applicable category of data specified in § 800.241, individually and in the aggregate, the approximate number of total unique persons from whom:

(*1*) The data is currently maintained; and

(*2*) The data has been maintained or collected at any point during the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B);

(C) Whether the U.S. business has a demonstrated business objective to maintain or collect data described in § 800.241(a)(1)(ii) of greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services, and if so, please provide a brief explanation;

(D) A description of how the U.S. business targets or tailors its products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or personnel or contractors thereof;

(E) The commercial rationale of the U.S. business for maintaining or collecting such sensitive personal data and a description of how the U.S. business uses and protects such sensitive personal data, including a description of how decisions regarding the use of sensitive personal data are made, and by whom;

(F) A description of the U.S. business's policies and practices regarding the sale, license, or transfer of, or grant of access to, sensitive personal data to third parties, including a copy of any notice provided to customers regarding the use and transfer of sensitive personal data;

(G) A description of the U.S. business's policies and practices regarding retention of sensitive personal data; and

(H) Any plans by the foreign party to the transaction to alter any of the foregoing;

(4) Whether the U.S. business that is the subject of the transaction:

(i) Possesses any licenses, permits, or other authorizations other than those under the regulatory authorities listed in this paragraph (c)(4) that have been granted by an agency of the U.S. Government (if applicable,

identification of the relevant licenses shall be provided); or

(ii) Has technology that has military applications (if so, an identification of such technology and a description of such military applications shall be included);

(5) With respect to the foreign person engaged in the transaction and its parents:

(i) The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the U.S. business with respect to:

(A) Reducing, eliminating, or selling research and development facilities;

(B) Changing product quality;

(C) Shutting down or moving outside of the United States facilities that are within the United States;

(D) Consolidating or selling product lines or technology;

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section; or

(F) Eliminating domestic supply by selling products solely to non-domestic markets;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls ownership interests, including contingent equity interest, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors (including other persons who perform the duties usually associated with such titles) of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any other contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers that could be relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction, and if there are any such rights or powers, their source (for example, a ''golden share,'' shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in any foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or equivalent governing body (including external directors and other persons who perform the duties usually associated with such titles) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following ''personal identifier information,'' which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(*1*) Full name (last, first, middle name);

(*2*) All other names and aliases used;

(*3*) Business address;

(*4*) Country and city of residence;

(*5*) Date of birth, in the format MM/DD/YYYY;

(*6*) Place of birth;

(*7*) U.S. Social Security number (where applicable);

(*8*) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(*9*) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(*10*) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following ''business identifier information'' for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, website address, and email address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(d)(1) The voluntary notice shall list any filings with, or reports to, agencies of the U.S. Government that have been or will be made with respect to the transaction prior to its completion, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

(2) Example: Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, ''Industrial Security Regulation,'' DOD 5220.22–R, and ''Industrial Security Manual for Safeguarding Classified Information,'' DOD 5220.22–M. Corporation X accordingly files a revised Form DD SF–328, and enters into discussions with the Defense Security Service about effectively insulating its facilities from the foreign person. Corporation X may also have made filings with the U.S. Securities and Exchange Commission, the Department of Commerce, the Department of State, or other federal departments and agencies. This paragraph (d) requires that certain specific information about these filings be reported to the Committee in a voluntary notice.

(e) In the case of the establishment of a joint venture in which one or more of the parties is contributing a U.S. business, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that

established, or are establishing, the joint venture.

(f) In the case of the acquisition of some but not all of the assets of an entity, paragraph (c) of this section requires submission of the specified information only with respect to the assets of the entity that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under this section, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 800.501, and the certifications required under paragraphs (l) and (m) of this section shall apply to such amendments.

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the agreed terms of the transaction.

(j) Persons filing a voluntary notice shall include:

(1) Complete organizational charts, both pre- and post-transaction, including information that identifies the name, principal place of business, and place of incorporation or other legal organization (for entities); nationality (for individuals); and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent;

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent; and

(iv) The U.S. business that is the subject of the transaction, both before and after completion of the transaction; and

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government;

(iii) A foreign government holds a substantial interest in the foreign person that is party to the transaction; and

(iv) The transaction has resulted or could result in a covered control transaction or a covered investment, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised, or any other access, rights, or involvement the foreign person will have in a U.S. business with respect to critical technologies, covered investment critical infrastructure, or sensitive personal data.

(k) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the U.S. Government signatories; and

(2) Any party to the transaction (including such party's parents, subsidiaries, or entities under common control with the party) has been a party to a transaction previously notified to the Committee.

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(m) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.204.) A sample certification may be found at the Committee's section of the Department of the Treasury website.

(n) Parties filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

(o) A party filing a voluntary notice may stipulate that the transaction is a covered transaction and, if the party stipulates that the transaction is a covered transaction, that the transaction is a foreign government-controlled transaction. A stipulation offered by any party under this section must be accompanied by a detailed description of the basis for the stipulation. The required description of the basis shall include, but is not limited to, discussion of all relevant information responsive to paragraphs (c)(6)(iii) through (v) of this section. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction, a foreign government-controlled transaction, and/or subject to mandatory declaration or notice for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

§ 800.503 Beginning of 45-day review period.

(a) The Staff Chairperson shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 800.502; and

(2) Disseminated the notice to all members of the Committee.

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson, or the Chairperson of the Committee has requested a notice under § 800.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(c) The Staff Chairperson shall promptly advise in writing all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to the transaction that is subject to the notice. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

§ 800.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 800.501 or § 800.502 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 800.502(m).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the review period specified by § 800.503, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered transaction.

(d) Examples:

(1) *Example 1.* The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.502 concerning classified materials and products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

(2) *Example 2.* Same facts as the first sentence of Example 1 of this section, except that the joint notice indicates that Corporation A does not intend to purchase Corporation X's Division Y, which is engaged in classified work for a U.S. Government agency. Corporations A and X notify the Committee on the 40th day of the 45-day notice period that Division Y will also be acquired by Corporation A. This fact constitutes a material change with respect to the transaction as originally notified, and the Staff Chairperson may reject the notice.

(3) *Example 3.* The Staff Chairperson receives a joint notice by Corporation A, a foreign person, and Corporation X, a U.S. business, indicating that Corporation A intends to purchase five percent of the voting securities of Corporation X. Under the particular facts and circumstances presented, the Committee concludes that Corporation A's purchase of this interest in Corporation X could not result in a covered investment in or foreign control of Corporation X. The Staff Chairperson shall advise the parties in writing that the transaction as presented is not subject to section 721.

(4) *Example 4.* The Staff Chairperson receives a voluntary notice involving the acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B has the right to appoint two members of Company X's board of directors. This information contradicts the material assertion in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

§ 800.505 Determination of whether to undertake an investigation.

(a) After a review of a notified transaction under § 800.503, the Committee shall undertake an investigation of any transaction that it has determined to be a covered transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.503, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered transaction will not impair the national security of the United States.

§ 800.506 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 800.503, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 800.507 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 800.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of the commencement of an investigation.

§ 800.508 Completion or termination of investigation and report to the President.

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation under this paragraph with respect to a covered transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, the term *extraordinary circumstances* means circumstances for which extending an investigation is necessary and the appropriate course of action, in the Chairperson's discretion, due to a force majeure event or to protect the national security of the United States.

§ 800.509 Withdrawal of notices.

(a) A party (or parties) to a transaction that has filed notice under § 800.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before a notice is refiled under § 800.501; and

(ii) Interim protections to address specific national security concerns with the covered transaction identified during the review or investigation of the covered transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted under paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.701.

Subpart F—Committee Procedures

§ 800.601 General.

(a) In any assessment, review, or investigation of a covered transaction, the Committee should consider the factors specified in section 721(f) and, as appropriate, require the parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered transaction;

(2) There is credible evidence to support a belief that any foreign person party to a covered transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices and declarations.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties' description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered transaction that the Committee identifies as having been notified to the Committee based upon the facts set forth in the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

§ 800.602 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation

provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 800.603 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

§ 800.604 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under subpart D or E imposed on the Committee shall be tolled during a lapse in appropriations.

Subpart G—Finality of Action

§ 800.701 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to:

(1) Covered control transactions proposed or pending on or after August 23, 1988;

(2) Transactions that, between November 10, 2018, and February 12, 2020, fell within the scope of part 801 of this title; and

(3) Covered investments proposed or pending after February 13, 2020.

(b) Subject to § 800.501(c)(1)(ii), such authority shall not be exercised if:

(1) Subject to § 800.219(d), the Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered transaction;

(2) The parties to the transaction have been advised in writing under § 800.407(a)(4), § 800.506, or § 800.508(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, under section 721(d), his or her decision not to exercise his or her authority under section 721 with respect to the covered transaction.

(c) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to August 23, 1988.

Subpart H—Provision and Handling of Information

§ 800.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subparts D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered transaction, shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the transaction. Parties to a transaction that have filed information with the Committee shall promptly advise the Staff Chairperson of any material changes to such information. If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, under the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required under section 721(l)(6)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(3)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.204. A sample certification may be found at the Committee's section of the Department of the Treasury website.

§ 800.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed with the Committee under this part, including information or documentary material filed under § 800.501(g), shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552 *et seq.*), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties.

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 800.509 or § 800.406(c), respectively, or where a notice or a declaration has been rejected under § 800.504(a) or § 800.406(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered transaction; or

(4) Such information or documentary material was filed under subpart D and the parties do not subsequently file a notice under subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(e) The provisions of the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(d)) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart I—Penalties and Damages

§ 800.901 Penalties and damages.

(a) Any person who submits a declaration or notice with a material misstatement or omission or makes a false certification under § 800.404, § 800.405, or § 800.502 may be liable to the United States for a civil penalty not

to exceed $250,000 per violation. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(b) Any person who fails to comply with the requirements of § 800.401 may be liable to the United States for a civil penalty not to exceed $250,000 or the value of the transaction, whichever is greater. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(c) Any person who, after December 22, 2008, violates, intentionally or through gross negligence, a material provision of a mitigation agreement entered into before October 11, 2018, with, a material condition imposed before October 11, 2018, by, or an order issued before October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. Any person who violates a material provision of a mitigation agreement entered into on or after October 11, 2018, with, a material condition imposed on or after October 11, 2018, by, or an order issued on or after October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. For clarification, under the previous two sentences, whichever penalty amount is greater may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

(d) A mitigation agreement entered into or amended under section 721(l) after December 22, 2008, may include a provision providing for liquidated or actual damages for breaches of the agreement. The mitigation agreement shall specify the amount of any liquidated damages that are a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee may consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the agreement.

(e) A determination to impose penalties under paragraphs (a) through (c) of this section must be made by the Committee. Notice of the penalty, including a written explanation of the conduct to be penalized and the amount of the penalty, shall be sent to the subject person electronically and by U.S. mail or courier service. Notice shall be deemed to have been effected by the earlier of the date of electronic transmission and the date of receipt of U.S. mail or courier service. For the purposes of this section, the term *subject person* means the person or persons who may be liable to the United States for a civil penalty.

(f) Upon receiving notice of a penalty to be imposed under paragraphs (a) through (c) of this section, the subject person may, within 15 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue any final penalty determination within 15 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

(g) The penalties and damages authorized in paragraphs (a) through (d) of this section may be recovered in a civil action brought by the United States in federal district court.

(h) Section 2 of the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), shall apply to all information provided to the Committee under section 721, including by any party to a covered transaction.

(i) The penalties and damages available under this section are without prejudice to other penalties, civil or criminal, available under law.

(j) The imposition of a civil monetary penalty or damages under these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

§ 800.902 Effect of lack of compliance.

If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or a lead agency in coordination with the Staff Chairperson, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or a lead agency in coordination with the Staff Chairperson may, in addition to the authority of the Committee to impose penalties under section 721(h) and to unilaterally initiate a review of any covered transaction under section 721(b)(1)(D)(iii):

(a) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

(b) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered transaction initiated after the date of the determination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(c) Seek injunctive relief.

Subpart J—Foreign National Security Investment Review Regimes

§ 800.1001 Determinations.

(a) The Committee may determine at any time that a foreign state has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

(b) The Committee may rescind a determination under paragraph (a) of this section if the Committee determines that such a rescission is appropriate.

(c) The Chairperson of the Committee shall publish a notice of any determination or rescission of a determination under paragraph (a) or (b) of this section, respectively, in the **Federal Register**.

§ 800.1002 Effect of determinations.

(a) A determination under § 800.1001(a) shall take effect immediately upon publication of a notice of such determination under § 800.1001(c) and remain in effect unless rescinded under § 800.1001(b).

(b) A rescission of a determination under § 800.1001(b) shall take effect on the date specified in the notice published under § 800.1001(c).

(c) A determination under § 800.1001(a) does not apply to any transaction for which a declaration or notice has been accepted by the Staff Chairperson under § 800.405(a)(1) or § 800.503(a), respectively.

(d) A rescission of a determination under § 800.1001(b) does not apply to any transaction for which:

(1) The completion date is prior to the date upon which the rescission of a

determination under paragraph (b) of this section becomes effective; or

(2) The following has occurred before publication of the rescission of determination under § 800.1001(c):

(i) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated;

(ii) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(iii) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities.

Appendix A to Part 800—Covered Investment Critical Infrastructure and Functions Related to Covered Investment Critical Infrastructure

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(i) Any:	(i) Own or operate any:
(a) Internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or	(a) Internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or
(b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. 153), or fiber optic cable, in each case that directly serves any military installation identified in § 802.227.	(b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. 153), or fiber optic cable, in each case that directly serves any military installation identified in § 802.227.
(ii) Any internet exchange point that supports public peering.	(ii) Own or operate any internet exchange point that supports public peering.
(iii) Any submarine cable system requiring a license under section 1 of the Cable Landing License Act of 1921 (47 U.S.C. 34), which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.	(iii) Own or operate any submarine cable system requiring a license under section 1 of the Cable Landing License Act of 1921 (47 U.S.C. 34), which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.
(iv) Any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of column 1 of this appendix A.	(iv) Supply or service any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of column 1 of this appendix A.
(v) Any data center that is collocated at a submarine cable landing point, landing station, or termination station.	(v) Own or operate any data center that is collocated at a submarine cable landing point, landing station, or termination station.
(vi) Any satellite or satellite system providing services directly to the Department of Defense or any component thereof.	(vi) Own or operate any satellite or satellite system providing services directly to the Department of Defense or any component thereof.
(vii) Any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), that is manufactured or operated for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987, as amended (10 U.S.C. 2430), or a Major System, as defined in 10 U.S.C. 2302d, as amended, and:	(vii) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), or operate any industrial resource that is a facility, in each case, for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987, as amended (10 U.S.C. 2430), or a Major System, as defined in 10 U.S.C. 2302d, as amended, and:
(a) The U.S. business is a ''single source,'' ''sole source,'' or ''strategic multisource,'' to the extent the U.S. business has been notified of such status; or	(a) The U.S. business is a ''single source,'' ''sole source,'' or ''strategic multisource,'' to the extent the U.S. business has been notified of such status; or
(b) the industrial resource:	(b) the industrial resource:
(1) Requires 12 months or more to manufacture; or	(1) Requires 12 months or more to manufacture; or
(2) is a ''long lead'' item, to the extent the U.S. business has been notified that such industrial resource is a ''long lead'' item.	(2) is a ''long lead'' item, to the extent the U.S. business has been notified that such industrial resource is a ''long lead'' item.
(viii) Any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), that is manufactured under a ''DX'' priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) in the preceding 24 months.	(viii) Manufacture any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), under a ''DX'' priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) within 24 months of the transaction in question.
(ix) Any facility in the United States that manufactures:	(ix) Manufacture any of the following in the United States:
(a) Specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (10 U.S.C. 2533b);	(a) Specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (10 U.S.C. 2533b);
(b) covered material, as defined in 10 U.S.C. 2533c, as amended;	(b) covered material, as defined in 10 U.S.C. 2533c, as amended;
(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or	(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or
(d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.	(d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.
(x) Any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, that has been funded, in whole or in part, by any of the following sources in the last 60 months:	(x) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, or operate any industrial resource that is a facility, in each case, that has been funded, in whole or in part, by any of the following sources within 60 months of the transaction in question:
(a) Defense Production Act of 1950 Title III program, as amended (50 U.S.C 4501 *et seq.*);	(a) Defense Production Act of 1950 Title III program, as amended (50 U.S.C. 4501 *et seq.*);

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(b) Industrial Base Fund under section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2508);	(b) Industrial Base Fund under section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2508);
(c) Rapid Innovation Fund under section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2359a);	(c) Rapid Innovation Fund under section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2359a);
(d) Manufacturing Technology Program under 10 U.S.C. 2521, as amended;	(d) Manufacturing Technology Program under 10 U.S.C. 2521, as amended;
(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program—Manage the WarStopper Program; or	(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program—Manage the WarStopper Program; or
(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.	(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.
(xi) Any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act, as amended (16 U.S.C. 824o(a)(1)).	(xi) Own or operate any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act, as amended (16 U.S.C. 824o(a)(1)).
(xii) Any electric storage resource, as defined in 18 CFR 35.28(b)(9), as amended, that is physically connected to the bulk-power system.	(xii) Own or operate any electric storage resource, as defined in 18 CFR 35.28(b)(9), as amended, that is physically connected to the bulk-power system.
(xiii) Any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.227.	(xiii) Own or operate any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.227.
(xiv) Any industrial control system utilized by:	(xiv) Manufacture or service any industrial control system utilized by:
(a) System comprising the bulk-power system as described above in item (xi) of column 1 of this appendix A; or	(a) System comprising the bulk-power system as described above in item (xi) of column 1 of this appendix A; or
(b) a facility directly serving any military installation as described above in item (xiii) of column 1 of this appendix A.	(b) a facility directly serving any military installation as described above in item (xiii) of column 1 of this appendix A.
(xv) Any:	(xv) Own or operate:
(a) Any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or	(a) Any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or
(b) collection of one or more refineries owned or operated by a single U.S. business with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.	(b) one or more refineries with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.
(xvi) Any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.	(xvi) Own or operate any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.
(xvii) Any:	(xvii) Own or operate any:
(a) Liquefied natural gas (LNG) import or export terminal requiring:	(a) Liquefied natural gas (LNG) import or export terminal requiring:
(1) Approval under section 3(e) of the Natural Gas Act, as amended (15 U.S.C. 717b(e)), or	(1) Approval under section 3(e) of the Natural Gas Act, as amended (15 U.S.C. 717b(e)), or
(2) a license under section 4 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1503); or	(2) a license under section 4 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1503); or
(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity under section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f).	(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity under section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f).
(xviii) Any financial market utility that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (12 U.S.C. 5463).	(xviii) Own or operate any financial market utility that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (12 U.S.C. 5463).
(xix) Any exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f), that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had:	(xix) Own or operate any exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f), that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had:
(a) With respect to all national market system securities that are not options, 10 percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or	(a) With respect to all national market system securities that are not options, 10 percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or
(b) with respect to all listed options, 15 percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.	(b) with respect to all listed options, 15 percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.
(xx) Any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.	(xx) Own or operate any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.
(xxi) Any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.	(xxi) Own or operate any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.
(xxii) Any interstate oil pipeline that:	(xxii) Own or operate any interstate oil pipeline that:
(a) Has the capacity to transport:	(a) Has the capacity to transport:
(1) 500,000 barrels per day or more of crude oil, or	(1) 500,000 barrels per day or more of crude oil, or
(2) 90 million gallons per day or more of refined petroleum product; or	(2) 90 million gallons per day or more of refined petroleum product; or

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(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6232).	(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6232).
(xxiii) Any interstate natural gas pipeline with an outside diameter of 20 or more inches.	(xxiii) Own or operate any interstate natural gas pipeline with an outside diameter of 20 or more inches.
(xxiv) Any industrial control system utilized by:	(xxiv) Manufacture or service any industrial control system utilized by:
(a) An interstate oil pipeline as described above in item (xxii) of column 1 of this appendix A; or	(a) An interstate oil pipeline as described above in item (xxii) of column 1 of this appendix A; or
(b) an interstate natural gas pipeline as described above in item (xxiii) of column 1 of this appendix A.	(b) an interstate natural gas pipeline as described above in item (xxiii) of column 1 of this appendix A.
(xxv) Any airport identified in § 802.210(a)(1) through (3).	(xxv) Own or operate any airport identified in § 802.210(a)(1) through (3).
(xxvi) Any:	(xxvi) Own or operate any:
(a) Maritime port identified in § 802.210(a)(4) or (5); or	(a) Maritime port identified in § 802.210(a)(4) or (5); or
(b) any individual terminal at such maritime ports.	(b) any individual terminal at such maritime ports.
(xxvii) Any public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), or treatment works, as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)), which:	(xxvii) Own or operate any public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), or treatment works, as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)), which:
(a) Regularly serves 10,000 individuals or more, or	(a) Regularly serves 10,000 individuals or more, or
(b) directly serves any military installation identified in § 802.227.	(b) directly serves any military installation identified in § 802.227.
(xxviii) Any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of column 1 of this appendix A.	(xxviii) Manufacture or service any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of column 1 of this appendix A.

Appendix B to Part 800—Industries

Industry	NAICS Code
Aircraft Manufacturing	*NAICS Code: 336411.*
Aircraft Engine and Engine Parts Manufacturing	*NAICS Code: 336412.*
Alumina Refining and Primary Aluminum Production	*NAICS Code: 331313.*
Ball and Roller Bearing Manufacturing	*NAICS Code: 332991.*
Computer Storage Device Manufacturing	*NAICS Code: 334112.*
Electronic Computer Manufacturing	*NAICS Code: 334111.*
Guided Missile and Space Vehicle Manufacturing	*NAICS Code: 336414.*
Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	*NAICS Code: 336415.*
Military Armored Vehicle, Tank, and Tank Component Manufacturing	*NAICS Code: 336992.*
Nuclear Electric Power Generation	*NAICS Code: 221113.*
Optical Instrument and Lens Manufacturing	*NAICS Code: 333314.*
Other Basic Inorganic Chemical Manufacturing	*NAICS Code: 325180.*
Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	*NAICS Code: 336419.*
Petrochemical Manufacturing	*NAICS Code: 325110.*
Petrochemical Manufacturing Powder Metallurgy Part Manufacturing	*NAICS Code: 332117.*
Power, Distribution, and Specialty Transformer Manufacturing	*NAICS Code: 335311.*
Primary Battery Manufacturing	*NAICS Code: 335912.*
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	*NAICS Code: 334220.*
Research and Development in Nanotechnology	*NAICS Code: 541713.*
Research and Development in Biotechnology (except Nanobiotechnology)	*NAICS Code: 541714.*
Secondary Smelting and Alloying of Aluminum	*NAICS Code: 331314.*
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	*NAICS Code: 334511.*
Semiconductor and Related Device Manufacturing	*NAICS Code: 334413.*
Semiconductor Machinery Manufacturing	*NAICS Code: 333242.*
Storage Battery Manufacturing	*NAICS Code: 335911.*
Telephone Apparatus Manufacturing	*NAICS Code: 334210.*
Turbine and Turbine Generator Set Units Manufacturing	*NAICS Code: 333611.*

PART 801—PILOT PROGRAM TO REVIEW CERTAIN TRANSACTIONS INVOLVING FOREIGN PERSONS AND CRITICAL TECHNOLOGIES

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

Authority: 50 U.S.C. 4565; Pub. L. 115–232

■ 3. Revise section 801.103 to read as follows:

§ 801.103 Applicability rule.

The regulations in this part apply to any pilot program covered transaction for which the following occurred on or after November 10, 2018, and prior to February 13, 2020:

(a) The completion date, unless any of the following occurred before October 11, 2018:

(1) The parties to the transaction executed a binding written agreement or other document establishing the material terms of the transaction;

(2) A party made a public offer to shareholders to buy shares of the pilot

program U.S. business that is the subject of the transaction; or

(3) A shareholder solicited proxies in connection with an election of the board of directors of the pilot program U.S. business that is the subject of the transaction;

(b) The parties to the transaction executed a binding written agreement or other document establishing the material terms of the transaction;

(c) A party made a public offer to shareholders to buy shares of the pilot program U.S. business that is the subject of the transaction; or

(d) A shareholder solicited proxies in connection with an election of the board of directors of the pilot program U.S. business that is the subject of the transaction or has requested the conversion of convertible voting securities thereof.

§ 801.302 [Amended]f

■ 4. Amend § 801.302 in paragraph (c) by removing ''(b)(2)(i) through (b)(2)(iii)'' after ''criteria set forth in paragraphs'' and adding in its place ''(b) through (d)''.

Dated: January 6, 2020.

Thomas Feddo,

Assistant Secretary for Investment Security.

[FR Doc. 2020–00188 Filed 1–13–20; 4:15 pm]

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Part III

Department of the Treasury

Office of Investment Security

31 CFR Part 802

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States; Final Rule

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 802

RIN 1505–AC63

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Final rule; interim rule with request for comments.

SUMMARY: The final rule establishes regulations to implement the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018. This rule sets forth the scope of, and process and procedures relating to, the national security review by the Committee on Foreign Investment in the United States of certain transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. The interim rule also adds a new definition for the term ''principal place of business,'' and the Department of the Treasury is seeking comments on this definition.

DATES:

Effective date: The final rule is effective on February 13, 2020. The interim rule adding § 802.232 is effective on February 13, 2020.

Comment date: The Department of the Treasury (Treasury Department) is seeking written comments from the public on the definition of ''principal place of business'' found at § 802.232, which must be received by February 18, 2020.

ADDRESSES: Written comments on § 802.232 may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Laura Black, Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via *https://www.regulations.gov.* Please submit comments only and include your name and company name (if any), and cite ''Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States'' in all correspondence. In general, the Treasury Department will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute and Proposed Rule

On August 13, 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115–232, 132 Stat. 2173, became law. FIRRMA amended and updated section 721 (section 721) of the Defense Production Act of 1950 (DPA), which delineates the authorities and jurisdiction of the Committee on Foreign Investment in the United States (CFIUS or the Committee). FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and it broadens the authorities of the President and CFIUS under section 721 to review and to take action to address any national security concerns arising from certain non-controlling investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction. In FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reaffirmed the United States' open investment policy, consistent with the protection of national security. *See* section 1702(b) of FIRRMA.

FIRRMA requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (January 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. On September 24, 2019, the Treasury Department published two proposed rules to implement provisions of FIRRMA. *See* 84 FR 50174 (September 24, 2019); 84 FR 50214 (September 24, 2019). (The Office of the Federal Register made versions available for public inspection on September 17, 2019.) Public comments on the proposed rules were due by October 17, 2019.

The proposed rule at 84 FR 50214 proposed establishing new regulations at part 802 of title 31 of the Code of Federal Regulations (CFR). These regulations specifically relate to CFIUS's authorities and the process and procedures to review transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. Further explanation of FIRRMA and the proposed provisions can be found in the proposed rule at 84 FR 50214; changes to the proposed rule are explained in further detail below.

The proposed rule at 84 FR 50174, which proposed amendments to the CFIUS regulations codified at part 800 of title 31 of the CFR, is being finalized in a separate rulemaking (the part 800 rule). The part 800 rule specifically relates to CFIUS's authorities and the process and procedures to review: (1) A merger, acquisition, or takeover by or with a foreign person that could result in foreign control of a U.S. business; (2) a non-controlling ''other investment'' in a U.S. business that affords a foreign person specified access to information in the possession of, rights in, or involvement in the substantive decisionmaking of certain U.S. businesses related to critical technologies, critical infrastructure, or sensitive personal data (which the part 800 rule and this preamble describe as ''covered investments''); (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or a covered investment; and (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

FIRRMA also authorizes the Committee to assess and collect fees with respect to covered real estate transactions for which a written notice is filed. The Treasury Department will publish a separate proposed rule implementing the Committee's fee authority at a later date.

B. Structure of FIRRMA Rulemaking and This Rule

Consistent with CFIUS processes generally, this rule reflects extensive consultation with CFIUS member agencies, as well as other relevant U.S. Government agencies.

This action finalizes the provisions for the new part 802 of title 31 of the CFR. This rule focuses on the Committee's expanded jurisdiction over certain types of real estate transactions. Accordingly, this rule implements one part of the overall scope of CFIUS's jurisdiction under section 721, as amended by FIRRMA. There are additional provisions in FIRRMA that are the subject of the part 800 rule. As explained in the preamble to the proposed rule, the Treasury Department is creating a new part (part 802) because it has determined that the technical and procedural aspects of CFIUS's review of transactions involving real estate are sufficiently distinct from those related to control transactions and certain non-controlling investments to warrant separate rulemaking. Nevertheless, this rule incorporates certain features and relevant provisions from part 800, which should be familiar to parties that have filed with CFIUS in the past.

There are additional provisions in FIRRMA that are the subject of the part 800 rule. In particular, a transaction that could result in control of a U.S. business by a foreign person is subject to part 800, and is not a covered real estate transaction under this rule. Additionally, CFIUS's new authority over covered investments in certain U.S. businesses, as provided by FIRRMA, is subject to part 800 (under the concurrent rulemaking).

The Treasury Department recognizes that FIRRMA's expansion of the Committee's jurisdiction over certain real estate transactions may impact parties who have not traditionally had reason to file with CFIUS. This rule therefore seeks to provide clarity to the business and investment communities with respect to the types of real estate transactions that are covered by the new authority under FIRRMA. In particular, this rule implements CFIUS's new real estate jurisdiction following the approach described in the proposed rule and is generally structured around specific sites—certain airports, maritime ports, and military installations—and specific geographic areas in or around those sites. (While the rule allows that ''other facilities or properties of the U.S. Government'' may in the future be included in the list of sites identified in the rule, none has been included at this time.) Given the specificity of certain provisions of this rule, the Treasury Department anticipates that it will periodically review, and when necessary, amend the regulations to address changes in the national security landscape.

In response to public comments, this action also implements an interim rule with respect to the definition of ''principal place of business'' found at § 802.232, and the Treasury Department is seeking public comment on this definition.

II. Overview of Comments on the Proposed Rule

During the public comment period, the Treasury Department received a number of written submissions on the proposed rule reflecting a wide range of views. All comments received by the end of the comment period are available on the public rulemaking docket at *https://www.regulations.gov.* Additionally, the Treasury Department hosted a public teleconference call to discuss the proposed rule on September 27, 2019, and a summary is available on the Committee's section of the Treasury Department website.

The Treasury Department considered each comment submitted on the proposed rule. Some of the comments were general in nature, for example, supporting the Treasury Department's efforts and approach with respect to aspects of the proposed rule. Other commenters noted the potential impact of the proposed rule on certain types of real estate and related transactions. The Treasury Department recognizes the vital importance of foreign investment to the U.S. economy, including investments in real estate. The Treasury Department drafted the proposed rule, and made revisions in finalizing the rule, to protect U.S. national security from the risk posed by certain foreign investment while at the same time maintaining the open foreign investment policy of the United States. The Treasury Department has determined that the specificity provided in the rule—with respect to, for example, identification of specific sites and relevant distances—provides clarity to the business and investment communities with respect to the types of real estate transactions that are covered by the Committee's new authority under FIRRMA. The Treasury Department will evaluate implementation of the rule and will provide, as appropriate, additional information to assist the public.

Some commenters requested clarification of specific provisions. Where appropriate, the Treasury Department provided additional clarification in the text of the rule and included more illustrative examples. Some commenters, however, requested greater specificity than is appropriate in regulations of general applicability or revisions that conflict with the Committee's statutory authority under FIRRMA. The section-by-section analysis below includes responses to comments. Further edits were made to the rule for consistency and clarity.

In addition to comments on the substance of the rule, several commenters requested an extension of the public comment period. The Treasury Department did not extend the public comment period in light of the fixed effective date established by FIRRMA. The Treasury Department anticipates that it will periodically review, and as necessary, make changes to the regulations (and any appendices), consistent with applicable law, and when appropriate, will provide the public an opportunity to comment.

III. Discussion of the Rule

A. Relationship With Part 800

Before addressing individual sections of the rule raised in the comments or otherwise revised from the proposed rule, it is important to address the relationship between this rule and the part 800 rule, which as noted is being issued concurrently with this rule.

The structure of the part 802 regulations is similar to the regulations at part 800, which are being updated and replaced through the concurrent rulemaking. Parties familiar with the part 800 regulations should find that this rule takes a comparable approach with respect to defining key terms, describing transactions that are covered and not covered under the rule, listing the information requirements for a filing to be complete, and setting forth the Committee's process and procedures, among other things. While differences exist between this rule and the part 800 rule, the scope and overall approach taken by the Committee to evaluating, concluding action on, or taking action on a transaction is consistent with part 800 and section 721.

Some commenters raised questions regarding specific sections of the rule that suggested additional clarity with respect to the relation between these two parts may be helpful. This rule is focused on certain types of real estate transactions involving a foreign person. Parties should be aware that certain transactions involving real estate could be covered transactions under the part 800 rule. For example, transactions that could result in foreign control or certain non-controlling investments by a foreign

person in an entity engaged in interstate commerce in the United States and that owns real estate could be subject to part 800 instead of part 802. In some cases, a collection of assets that includes real estate may constitute a U.S. business under part 800. Additionally, a long-term lease or concession arrangement under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner, could be subject to part 800 instead of part 802. In order to comprehensively understand the transactions that could fall within the scope of this rule, in contrast to the transactions that could fall within the scope of the part 800 rule, the public is encouraged to be aware of the separate and concurrent rulemaking on part 800.

Finally, although FIRRMA introduces the term ''close proximity'' in the context of real estate transactions, and this rule defines the geographic coverage for real estate transactions, CFIUS has and will continue to retain the authority to assess and, if necessary, take action with respect to any covered transaction under the part 800 rule that gives rise to national security concerns on the basis of proximity to any government site and activity. The Committee's authority under the part 800 rule to review and take action on a transaction is not limited in any way by the sites or distances specified in this rule.

B. Interim Rule: Section 802.232—Principal Place of Business

This rule includes a definition of ''principal place of business'' as an interim rule. The interim rule is effective as of February 13, 2020, and the Treasury Department is seeking public comment on the new definition through February 18, 2020.

The proposed rule used the term ''principal place of business'' but did not define it. A commenter urged the Committee to provide additional clarity by defining the term. In response to this comment and comments received on the part 800 rule, § 802.232 now provides a definition of a party's ''principal place of business'' as ''the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent,'' subject to the qualification in § 802.232(b). For those entities whose nerve center is in the United States, the purpose of the qualification in § 802.232(b) is to nevertheless ensure consistent treatment of an entity's principal place of business in accordance with its own assertions to government entities, provided the facts have not changed since those assertions.

Because the definition of ''principal place of business'' in § 802.232 is new, it is being made effective by this rule on an interim basis and may be amended based on comments received. As an interim rule, § 802.232 will become effective on the same date as the other provisions in this rule (*i.e.,* February 13, 2020) to provide clarity and certainty for transaction parties. The Treasury Department invites comments on this interim rule.

C. Summary of Comments and Changes From the Proposed Rule

1. Subpart A—General

Section 802.102—Risk-Based Analysis

The proposed rule, at § 802.102, defined the terms ''threat,'' ''vulnerabilities,'' and ''consequences to national security'' in describing the risk-based analyses undertaken by the Committee to determine whether a specific transaction represents a risk to national security. One commenter sought clarification about how, specifically, these terms would be applied to use and lease agreements with foreign airlines.

The rule makes no change to the proposed text of § 802.102 in response to this comment because the rule applies to many types of real estate transactions, and it would be inappropriate in regulations of general applicability to specify the application of this provision to a particular type of transaction. In conducting a risk-based analysis for any transaction, CFIUS analyzes the particular facts and circumstances of the transaction to identify the national security considerations, if any, presented by the transaction. Section 721(f) of the DPA, as amended, provides an illustrative list of factors for consideration by CFIUS and the President in determining whether a covered transaction poses a national security risk. Some of these factors may be relevant to covered real estate transactions. While further discussing the specific factors relevant to particular types of real estate transactions in one sector is not appropriate for a broader rule, the Committee will consider whether additional information can be made publicly available to assist parties in understanding the Committee's analysis in general. In the meantime, parties may find helpful the Treasury Department's previously published Guidance Concerning the National Security Review Conducted by CFIUS, 73 FR 74567 (December 8, 2008), which is still in effect.

Section 802.105—Rules of Construction and Interpretation

The rule adds a new section to clarify that the examples included in the regulations are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part, as well as to clarify that, as used throughout the regulations, the term ''including'' means ''including without limitation.''

2. Subpart B—Definitions

Subpart B sets forth the defined terms for part 802. More than half of the defined terms in this rule are incorporated from the part 800 rule, with conforming changes to apply in the context of real estate transactions, as applicable. The remainder of the terms are specifically defined for part 802.

Section 802.203—Close Proximity

The proposed rule defined ''close proximity'' as the area that extends outward one mile from the boundary of a relevant site. Some commenters encouraged the Committee to ensure that applicable set-back distances are appropriately tailored to each individual site. A number of commenters supported an online resource—such as a map or other interactive tool—to assist the public in understanding the geographic areas that are subject to CFIUS jurisdiction under the rule.

The rule makes no change to this definition in response to these comments. The identification of particular military installations and the distances around those sites were determined by the Department of Defense based upon an evaluation of national security considerations. The Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope set under the rule to ensure appropriate application in light of national security considerations.

With respect to the comments seeking an online resource, the Treasury Department anticipates making available a web-based tool to help the public understand the geographic coverage of the rule. In the meantime, information relevant to certain aspects of the rule is available online. For example, the Census Bureau within the Department of Commerce maintains a web-based system, TIGERweb, which allows users to select features (*e.g.,* military installations, urbanized areas,

and urban clusters) and view such attributes on a map. Additionally, each of the National Oceanic and Atmospheric Administration and the Bureau of Ocean Energy Management maintains a web-based map delineating U.S. maritime boundaries, including the territorial sea and other attributes relevant to the geographic coverage under the rule.

Section 802.206—Concession

The proposed rule defined ''concession'' as a grant of rights by a U.S. public entity for the purpose of developing or operating infrastructure for an airport or maritime port. A commenter noted that this term is defined differently in the Department of Transportation regulations regarding airport concessions and suggested that the specific definition in the proposed rule might cause confusion given the term's usage in the Department of Transportation regulations.

The rule makes no change to this definition in response to the comment. The Department of Transportation definition does not match the intended scope of real estate transactions subject to CFIUS's jurisdiction as implemented by the rule. Nevertheless, parties in all industries, including the airport concession industry, should not be confused about the meaning of the term ''concession'' in the rule as it is explicitly defined as a type of real estate transaction. For greater clarity, the rule does contain a revision specifying that the defined term includes the assignment of part of a concession.

Section 802.208—Control

The proposed rule adopted the definition of ''control'' from the proposed rule for part 800. The part 800 rule makes a technical correction to the definition of ''control,'' and in order to remain consistent with part 800, this rule makes the same technical correction. In particular, § 802.208(c)(4) has been revised to clarify that anti-dilution protections are more accurately characterized as a right instead of a power.

Section 802.210—Covered Port

The proposed rule provided definitions for the terms ''airport'' and ''maritime port.'' A commenter suggested that the Committee publish an appendix listing the airports and maritime ports that meet the definitions in the proposed rule, noting that the list of relevant sites may change and some practitioners are not familiar with information published by the Department of Transportation. Another commenter suggested that the Committee make available on its website hyperlinks to the relevant lists of airports and maritime ports maintained by the Department of Transportation.

Several revisions have been made to the rule in response to the comments. First, the rule combines the definitions of ''airport'' and ''maritime port'' from the proposed rule into a new term, ''covered port.'' This definition of ''covered port'' identifies in § 802.210(a) the relevant lists maintained by the Department of Transportation and clarifies the specific references to the various lists. Second, the definition includes provisions to clarify the effective date of any changes to the Department of Transportation lists. Specifically, § 802.210(b)(1) sets forth a 30-day delayed effectiveness for any additions to any of the airport and maritime port lists under the definition of ''covered port'' in paragraph (a). This was done because changes to the lists are not published in the **Federal Register**, and the Treasury Department wanted to provide the public with a notice period for any additions. By contrast, when an airport or maritime port no longer meets the rule's definition of covered port in paragraph (a), the removal of the port from the relevant list will be recognized immediately upon publication of the updated list by the Department of Transportation. The rule adds § 802.210(b)(2) to make clear that the airport or maritime port list that applies for any particular transaction is the list that is in effect (taking into account the 30-day delayed effectiveness in paragraph (b)(1)) on the day prior to the earlier of the date on which the parties have signed a written document establishing the material terms of the transaction or the completion date.

With respect to compiling all covered ports into a single list, the Treasury Department has determined it most practicable to direct the public to available online resources maintained and updated by the Department of Transportation. The Treasury Department anticipates making information available on the CFIUS web page that will assist the public in navigating to the relevant lists maintained by the Department of Transportation.

Section 802.211—Covered Real Estate

The proposed rule defined ''covered real estate'' in a manner that connected specific sites with the relevant geographic coverage in and around those sites. Commenters did not suggest specific changes to the text of this definition. Instead, commenters generally supported the approach in the proposed rule of identifying specific sites and distances, and supported having online resources available to assist the public in understanding the geographic coverage of the rule. In particular, commenters expressed an interest in understanding the delineation of certain boundaries, including the U.S. coastline.

The rule revises paragraph (b)(4) of this section by replacing the 12 nautical mile reference with a reference to the territorial sea. The Treasury Department has determined that a reference to the territorial sea provides greater clarity to the public. Additionally, as noted above, the Treasury Department anticipates making a web-based tool available in the near-term to assist the public. In the meantime, existing U.S. Government resources provide relevant information for purposes of understanding various aspects of this rule.

Section 802.212—Covered Real Estate Transaction

The proposed rule defined ''covered real estate transaction'' to capture the types of transactions subject to CFIUS's jurisdiction under the rule. A commenter suggested that the definition explicitly exclude transactions between a foreign person and its parent as well as between a foreign person and one or more of its controlled affiliates. The commenter also requested clarification with respect to submitting a single declaration or filing a single notice for multiple covered real estate transactions that are in close proximity to one another and associated with a single project such as in the renewable energy industry. Another commenter suggested that the rule cover other categories of real estate transactions—such as those involving cropland and rare earth minerals.

The rule makes no change to the definition of ''covered real estate transaction'' in response to the comments. First, an intra-company transfer of assets, including real estate, carried out to achieve some legal, financial, or other business objective, might not constitute a covered real estate transaction, and in any case might not result in a change in the ultimate parent of the entity with the covered real estate and, therefore, might not present new national security considerations. However, the particular facts and circumstances of the specific arrangement would need to be considered. Second, with respect to multiple covered real estate transactions that are part of a larger project, a revision to the rule is not necessary

because parties can and should consider the particular circumstances of any transaction, including related transactions, in determining whether to submit a single declaration or notice or multiple to the Committee for review. National security factors, timing considerations, and other transaction characteristics may weigh in favor of taking a particular approach. Related to this comment, however, the rule has been revised in the sections describing the contents of declarations and notices to include a description of whether the transaction is part of a larger project undertaken by the foreign person. Finally, the Committee has not expanded this definition to cover other categories of real estate transactions because the categories suggested by the commenter are not authorized under FIRRMA.

This section incorporates other revisions including to § 802.212(b) to clarify that a purchase, lease, or concession, where there is a subsequent change in rights that could result in the foreign person having at least three property rights, is a covered real estate transaction.

Section 802.214—Excepted Real Estate Foreign State

The Treasury Department received a number of comments on the definition of ''excepted real estate foreign state.'' Commenters supported the concept of the excepted real estate foreign state and requested that the initial list be published as soon as possible. Commenters suggested particular countries or defined groups of countries be included as excepted real estate foreign states and that advance notice be given prior to any rescission. Commenters also requested that the factors for a determination under § 802.1001 be precise and transparent and that the Committee consult with foreign states seeking to qualify as excepted real estate foreign states.

The rule makes no change to the proposed text in response to these comments. With respect to the eligible foreign states, the Committee has initially selected Australia, Canada, and the United Kingdom of Great Britain and Northern Ireland. The Committee identified these countries due to aspects of their robust intelligence-sharing and defense industrial base integration mechanisms with the United States. Additionally, as noted in the preamble to the proposed rule, the concept and definition of ''excepted real estate foreign states'' are new and an expansive application carries potentially significant implications for the national security of the United States. Consequently, the Committee is initially identifying a limited number of eligible foreign states and may expand the list in the future.

The rule revises this section to clarify that the definition of ''excepted real estate foreign state'' operates as a two-criteria conjunctive test, with delayed effectiveness for the second criterion. Thus, as of February 13, 2020, each of the three foreign states that the Committee identifies as eligible foreign states will be an excepted real estate foreign state, without regard to the second criterion (*i.e.,* favorable determination under § 802.1001). In order for each of these countries to remain an excepted real estate foreign state after the end of the two-year delayed effectiveness period (*i.e.,* February 13, 2022), the Committee must make a determination under § 802.1001. This two-year period is intended to provide these initial eligible foreign states time to ensure that their national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment reviews meet the requirement under § 802.1001. This two-year period also provides the Committee time to develop processes and procedures for making determinations under § 802.1001, which could be applied to a broader group of countries in the future. In selecting the initial eligible foreign states, the Committee takes no position on whether the foreign states currently meet the determination factors discussed below at § 802.1001.

Finally, the rule removes language regarding internal Committee processes (for which a conforming change was also made in § 802.1001), and revises note 1 to § 802.214 to clarify the publication mechanics for identifying the foreign states that have met each of the two separate criteria of the definition of ''excepted real estate foreign state.''

Section 802.215—Excepted Real Estate Investor

The proposed rule set forth a definition of ''excepted real estate investor,'' taking into account increasingly complex ownership structures and accounting for such structures in the application of the Committee's jurisdiction. With respect to the criteria to qualify as an excepted real estate investor, commenters discussed the board composition requirement, noting that it was limiting and suggested changes. Commenters also sought additional clarity regarding the process to be considered an excepted real estate investor, including how an excepted real estate investor can prove that status, or whether an excepted real estate investor would receive a form or certificate from the Committee establishing that status. Other commenters suggested that the Committee adopt a parallel category to excepted real estate investor, which some termed ''excepted trusted real estate investor,'' that would allow certain investors who are not connected to an excepted real estate foreign state to receive the benefits of being an excepted real estate investor. A commenter suggested various criteria for this concept, including the individual investor's previous interactions with the Committee.

In response to these comments and similar comments received on the part 800 proposed rule, the rule modifies the definition of ''excepted real estate investor.'' First, the board member nationality criterion is revised to allow up to 25 percent representation by foreign nationals of foreign states that are not excepted real estate foreign states. Second, the percentage ownership limit for an individual investor in an excepted real estate investor is revised from five to 10 percent. Third, the definition of ''minimum excepted ownership'' under § 802.228 is revised as discussed below.

The rule does not make other changes in response to the comments. All of the conditions under § 802.215(a)(3), including the minimum excepted ownership conditions, apply to *each parent* (as defined at § 802.229) of the foreign person. There is no separate process for the Committee to provide a determination for a prospective investor on whether it qualifies as an excepted real estate investor. As with other jurisdictional determinations, parties themselves should assess whether they qualify as excepted real estate investors. It is important to note that not qualifying as an excepted real estate investor should not be interpreted as an individualized assessment that the particular foreign person poses a threat to national security.

Consistent with FIRRMA, the ''excepted real estate investor'' definition focuses on the investor's connection to an excepted real estate foreign state, which provides the greatest clarity to the business and investment communities while protecting national security interests. Such a definition also furthers the Committee's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and increase cooperation with the United States. Notably, the excepted real estate investor definition eliminates

Committee jurisdiction for specified real estate transactions by certain investors. Therefore, some criteria suggested by commenters as part of the ''excepted trusted real estate investor'' concept are less suitable for determining jurisdiction and more suitable for other issues, such as certain aspects of the part 800 rule relating to mandatory declarations.

Finally, the rule revises § 802.215(b) to specify when the ownership interests of separate foreign persons will be aggregated for the purposes of § 802.215(a)(3)(iv). The rule also modifies § 802.215(d) to include the criteria in § 802.215(c)(1)(i) through (iii) in order to retain jurisdiction over certain transactions where the foreign investor is deemed not to be an excepted real estate investor subsequent to the transaction due to action by the President under section 721, or enforcement by the Committee of violations under this part, parts 800 or 801, or section 721.

Section 802.216—Excepted Real Estate Transaction

The proposed rule defined ''excepted real estate transaction'' by listing specific types of transactions that are not covered real estate transactions, as well as examples. Some commenters sought clarification with respect to when the acquisition of commercial real estate constitutes the acquisition of a U.S. business. Some commenters suggested broadening certain exceptions. A couple of these comments noted the application of the rule in the airport context and suggested broadening the exception for retail trade, accommodation, and food service sector establishments, as well as excepting foreign air carrier leasing arrangements. One commenter sought clarification on the exception related to commercial space and whether 10 percent of tenants should be determined by the number of leaseholders or by the number of employee-occupants in the commercial space. Another commenter suggested excluding certain shore-based and offshore areas and structures.

The rule is revised in response to certain of the comments. First, the rule adds an exception for ''foreign air carriers,'' as defined in 49 U.S.C. 40102, to the extent that the lease or concession is related to the foreign person's activities as a foreign air carrier, and for whom the Department of Homeland Security's Transportation Security Administration has accepted a security program under 49 CFR 1546.105. This exception was added in light of the Department of Homeland Security's existing oversight with respect to foreign air carriers. Second, the rule revises the exception for retail trade, accommodation, and food service sector establishments by eliminating the reference to the North American Industry Classification System codes and instead applying the exception to leases and concessions of real estate that may be used only for the purposes of engaging in the retail sale of consumer goods or services to the public. This revision provides a broader exception for retail services as compared to the proposed rule, with respect to, for example, car rental and parking. Finally, the rule clarifies through the text of § 802.216(f) and illustrates through a new example that the exception related to commercial space in a building is based on the number of parties that own, lease or have a concession to the commercial space in the building.

The rule makes other clarifying edits to this section, including in the illustrative examples. Changes were not made in this section in response to the comment regarding certain shore-based and offshore areas and structures based on a balancing of various considerations.

Section 802.217—Extended Range

The proposed rule defined the ''extended range'' to mean the area that extends 99 miles outward from the outer boundary of close proximity of certain military installations, but, where applicable, no more than 12 nautical miles seaward of the coastline of the United States. Commenters sought to understand the rationale behind the specific distance set in the regulations and the interaction with the exception under § 802.216(c) for urbanized areas and urban clusters.

The rule makes no change to the proposed definition of ''extended range'' in response to the comments. The particular military installations listed in the appendix and the covered distances defined in the regulations were determined by the Department of Defense based upon an evaluation of national security considerations. The Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope set under the rule to ensure appropriate application in light of national security considerations. The rule does replace the reference to 12 nautical miles with a reference to the territorial sea. As noted above in the definition of ''covered real estate,'' the Treasury Department has determined that a reference to the territorial sea will be more useful to the public as a geographic reference.

Section 802.224—Investment Fund

The rule adds a definition for investment fund that conforms to the term used in the part 800 rule. This term was added in part 802 to provide clarity with respect to the new interim definition of ''principal place of business.''

Section 802.226—Lease

The definition of ''lease'' is modified in the rule to clarify that the term includes assignments in whole or part.

Section 802.228—Minimum Excepted Ownership

To conform with changes to part 800, in response to comments received on specific provisions of that separate rulemaking, the rule amends the text of § 802.228 by revising the minimum excepted ownership percentage in § 802.228(b) from 90 to 80 percent.

Section 802.229—Parent

To conform with changes to part 800, in response to comments received on that separate rulemaking, the rule adds a provision at § 802.229(a)(2) that explicitly includes a general partner, managing member, or equivalent of an entity within the definition of ''parent.'' The rule also makes some minor technical edits and adds an example illustrating an entity with more than one parent.

Section 802.233—Property Right

The proposed rule included as an element of a covered real estate transaction that certain ''property rights'' be afforded to the foreign person through the purchase, lease, or concession of covered real estate. The rule adds examples under this definition. The first example illustrates that the right to exclude others from physically accessing the property need not be absolute with respect to all other persons or activities. The second example illustrates that a right is afforded, even if it is not exercisable until a separate regulatory approval is received.

Section 802.238—United States

The rule revises the definition of ''United States'' for consistency with the definition in FIRRMA.

Section 802.241—U.S. Business

The proposed rule defined ''U.S. business'' to conform to the definition in FIRRMA. Commenters to the proposed rule for part 800 requested clarity with respect to the Committee's intended interpretation of the term U.S. business. Consistent with the concurrent rulemaking finalizing part

800, the rule makes no change to the proposed definition of ''U.S. business.'' The proposed definition tracks the language of FIRRMA and is not intended to suggest that the extent of a business's activities in interstate commerce in the United States is irrelevant to the Committee's analysis of national security risk.

Section 802.244—Voting Interest

The proposed rule provided a definition for the term ''voting interest.'' One commenter sought clarification of the term and whether it includes consent, veto, right to appoint a board member (without a shareholder vote), or other special rights. The commenter also suggested the term be limited to voting interests in major decisions. Similar comments were made on this provision in the part 800 rule.

The rule makes no change in response to the comments. The definition of ''voting interest'' is long-established, and, any revisions will have wide-ranging effects throughout the part 802 and part 800 regulations because voting interest is incorporated into other defined terms, such as parent. Where appropriate, the Treasury Department provided clarification through revisions to the part 800 rule.

3. Subpart C—Coverage

Section 802.302—Transactions That Are Not Covered Real Estate Transactions

One commenter requested a sample list of transactions that are not covered real estate transactions. The commenter provided examples and noted its understanding that such scenarios would not be covered real estate transactions because they would not meet the criteria under the rule if a foreign person were an investor.

No change was made to this section in response to this comment because whether a particular type of transaction is covered by the rule is determined by the particular facts and circumstances. This section was revised for clarity by streamlining the provisions and removing an example.

Section 802.303—Lending Transactions

The proposed rule discussed lending transactions at § 802.303, which include commercial mortgages. While a lending transaction generally shall not, by itself, constitute a covered real estate transaction, the proposed rule discussed factors that CFIUS will consider in determining whether the lending transaction is a covered real estate transaction. One commenter requested language be added that would except from CFIUS jurisdiction lenders who take possession of property in foreclosure and put the property back on the market a short period of time later. No change was made to this section in response to this comment because an assessment of the particular facts and circumstances would be needed to determine whether national security concerns arise from the transaction. The proposed rule noted the factors the Committee will consider with respect to whether a default under a lending transaction would afford the foreign person the property rights defined in the proposed rule. In determining whether to accept a declaration or notice, the Committee also will consider the immediacy or occurrence of the default or other condition. The rule makes clarifying revisions in this section including incorporating the change in rights construct to paragraph (a)(1) and consideration of whether the foreign person had made arrangements to transfer the ownership or property rights to an excepted real estate investor under paragraph (a)(2).

4. Subpart D—Declarations

The proposed rule, in subpart D, set out an abbreviated filing process through the submission of a declaration.

Section 802.401—Procedures for Declarations

A commenter expressed concern about having public entities, such as airports, submit declarations or file notices. No change was made to this section in response to this comment. The Treasury Department has attempted to minimize the burden of this rule on U.S. public entities, particularly where the counterparty has the relevant information to submit a notice or file a declaration.

Section 802.402—Contents of Declarations

The rule modifies this section to require additional information including to allow the Committee to more efficiently assess whether a transaction falls under its jurisdiction for real estate transactions. The rule requires a brief description of whether the transaction is part of a larger project undertaken by the foreign person, and whether the foreign person is acquiring a collection of assets or interest in an entity. This information will help the Committee better determine whether there is a U.S. business that is the subject of the transaction. Additionally, this section is revised to require parties to provide a brief description of any U.S. Government leases involved in the transaction. With respect to the foreign person and its affiliates, the final rule further clarifies what relevant address information should be included in a declaration. Finally, the rule requires that parties provide additional information about the transaction such as any applicable term, current physical security of premises, and distance to covered port(s) or military installation(s) relevant to CFIUS's geographic coverage under the rule.

Section 802.405—Committee Actions

The rule clarifies that the Committee may request that parties file a written notice under subpart E if it has reason to believe that the transaction may raise national security considerations.

5. Subpart E—Notices

The rule makes revisions to § 802.502(b) similar to the revisions discussed above under § 802.402, and makes other clarifying edits.

6. Subpart I—Penalties and Damages

The proposed rule set out the penalty provisions, at subpart I. A number of clarifying and technical edits were made to this subpart. Additionally, the rule revises § 802.901(e) to allow tolling of the Committee's deadline to respond to a petition, upon written agreement with the party, to facilitate further negotiations, including for settlement of the potential civil monetary penalty.

7. Appendix A

The appendix to the proposed rule identified bases, ranges, and other installations that meet the definition of ''military installation'' at § 802.227, and, as applicable, related counties or other geographic areas throughout the United States that are covered real estate for the purposes of this part. A commenter sought additional information about whether, and how, appendix A will be revised in the future. The Treasury Department anticipates updating appendix A, as appropriate, through notices published in the **Federal Register**.

The rule includes revisions to appendix A to remove one site and to further refine the geographic areas covered in connection with the sites listed at part 3 of the appendix.

8. Other Comments

The Treasury Department received several comments that did not address any specific provision of the rule. For example, one commenter sought guidance from the Committee on when parties should submit a declaration rather than file a notice. Such advice is beyond the purview of this rule; whether a party files a notice or submits a declaration will depend on many

factors specific to the party and to the transaction.

IV. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which governs review of regulations by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, these regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018 Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Justification for Interim Rule

The proposed rule, and the proposed rule for part 800 at 84 FR 50174, included provisions that use the term ''principal place of business.'' The Treasury Department received comments on these provisions, including recommendations to add a definition for the term.

In response to these comments, a definition for ''principal place of business'' has been included. The Treasury Department believes it would benefit the public and the Committee to receive comments from the public on this definition before it is made final. This rule therefore contains an interim rule that implements a definition for the term ''principal place of business'' that will become effective with the rest of the rule, and the Treasury Department is providing the public 30 days to comment on the new definition of ''principal place of business.''

It is in the public interest to make the ''principal place of business'' definition effective on the same date as the rule. Commenters requested greater clarity concerning which parties are subject to CFIUS jurisdiction. The new definition directly addresses those requests and provides greater transactional certainty. By clarifying that certain transactions are not subject to CFIUS jurisdiction, the addition of the definition of ''principal place of business'' reduces the regulatory burden on the public, allowing some parties to forego the expense, time, and uncertainty involved in submitting a declaration or filing a notice with the Committee. Because of the added clarity and potential reduction in regulatory burden the definition provides to the public, having it become effective immediately is in the public's interest. Nonetheless, the Treasury Department is requesting comments to that definition and will consider them before finalizing the interim rule.

Paperwork Reduction Act

The collections of information contained in this rule were submitted to OMB for review along with the proposed rule, in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507(d)). No comments were received to the PRA estimates. However, and as noted above, the Treasury Department has modified some of the information requests associated with notices and on the declarations form. These changes represent clarifications that the Treasury Department identified in its review of the information requirements, as well as changes necessary to implement certain provisions that were modified from the proposed rule. The additional information requested is not substantially different from the information that was proposed to be collected, and the Treasury Department's estimates of burden hours for completing declarations and notices do not differ from those estimated at the proposed rule stage. These collections have been submitted to OMB under control number 1505–0121.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Regulatory Flexibility Act

Regardless of whether the provisions of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), apply to this rulemaking, for reasons noted in the preamble to the proposed rule, the Treasury Department prepared for public comment an Initial Regulatory Flexibility Analysis and determined through that analysis that the proposed rule would most likely not affect a substantial number of small entities. The Treasury Department specifically requested comments on the proposed rule's effect on small entities; no such public comments were received. The Secretary of the Treasury hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities, based on the following reasons.

The rule expands the jurisdiction of the Committee to review the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. Accordingly, the rule may impact any U.S. business, including a small U.S. business, that engages in a covered real estate transaction.

There is no single source for information on the number of small U.S. businesses that would be involved in some way in the purchase or lease by, or concession to a foreign person of real estate that could be covered under this rule. However, the Treasury Department anticipates only 350 real estate transactions, out of the thousands or more of the annual number of real estate transactions in the United States, will be the subject of a declaration or notice of a covered real estate transaction. Even if each of these 350 transactions involved a small U.S. business, based on past experience it is likely that only a small, and not significant, percentage of those anticipated 350 real estate transactions will incur impacts, such as incurring additional costs through mitigation or action by the President.

Additionally, the Treasury Department also has taken steps to reduce the burden of this rule on small entities. For example, in addition to filing notices of transactions with the Committee, the rule allows parties to submit shorter declarations to the Committee using an online fillable form. Also, the Committee anticipates making available a free, web-based tool to help the public understand the geographic coverage of the rule. As noted above, in the meantime, information relevant to certain aspects of the rule is available online. These tools should help reduce compliance costs for small entities.

Congressional Review Act

This rule has been submitted to OIRA, which has determined that the rule is a ''major'' rule under the Congressional Review Act (CRA). However, the Treasury Department has determined there is good cause under 5 U.S.C. 808(2) to publish the rule notwithstanding the timing requirements for major rules under 5 U.S.C. 801(a)(3) because delaying the effectiveness of this rule beyond 30 days is impracticable, unnecessary, and contrary to the public interest. Under FIRRMA, the provisions expanding jurisdiction over real estate transactions and establishing declarations, among others, will become effective on February 13, 2020, regardless of whether this rule is published and effective. *See* Section 1727(b)(1)(A) of FIRRMA. Without the processes, procedures and definitions provided by the rule as directed by FIRRMA, market participants will face substantial hardship, delay, and expense in complying with the requirements of

FIRRMA. Accordingly, the Treasury Department finds good cause that notice and public procedure under 5 U.S.C. 801(a)(3) are impracticable, unnecessary, and contrary to the public interest. This rule will become effective on February 13, 2020, notwithstanding 5 U.S.C. 801(a)(3).

List of Subjects in 31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Treasury Department adds part 802 to title 31 of the Code of Federal Regulations to read as follows:

PART 802—REGULATIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

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802.1001 Determinations.
802.1002 Effect of determinations.
Appendix A to Part 802—List of Military Installations and Other U.S. Government Sites

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General

§ 802.101 Scope.

(a) Section 721 of title VII of the Defense Production Act of 1950, as amended (50 U.S.C. 4565) authorizes the Committee on Foreign Investment in the United States to review transactions involving real estate that meet specified criteria, which are referred to in this part as ''covered real estate transactions'' and defined at § 802.212, and to mitigate any risk to the national security of the United States that arises as a result of such transactions. Section 721 also authorizes the President to suspend or prohibit any covered real estate transaction when, in the President's judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered real estate transaction might take action that threatens to impair the national security of the United States, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security of the United States in the matter before the President.

(b) This part implements regulations pertaining to covered real estate transactions. Regulations pertaining to ''covered transactions'' are addressed in part 800 of this chapter.

§ 802.102 Risk-based analysis.

Any determination of the Committee with respect to a covered real estate transaction, to suspend, refer to the President, or to negotiate, enter into or impose, or enforce any agreement or condition under section 721 shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered real estate transaction. Any such risk-based analysis shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. For purposes of this part, any such analysis of risk shall include and be informed by consideration of the following elements:

(a) The *threat,* which is a function of the intent and capability of a foreign person to take action to impair the national security of the United States;

(b) The *vulnerabilities,* which are the extent to which the nature of the covered real estate presents susceptibility to impairment of national security; and

(c) The *consequences to national security,* which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.

§ 802.103 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 802.104 Applicability rule.

(a) Except as provided in paragraph (b) of this section and otherwise in this part, the regulations in this part apply from February 13, 2020.

(b) The regulations in this part do not apply to any transaction for which:

(1) The completion date is prior to February 13, 2020; or

(2) The parties to the transaction have executed, prior to February 13, 2020, a binding written agreement, or other binding document, establishing the material terms of the transaction.

§ 802.105 Rules of construction and interpretation.

(a) The examples included in this part are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part.

(b) As used in this part, the term ''including'' means ''including but not limited to.''

Subpart B—Definitions

§ 802.201 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC, area are closed. For purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 802.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

Note 1 to § 802.201: See § 802.604 regarding the tolling of deadlines during a lapse in appropriations.

§ 802.202 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction; and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice, declaration, or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking partners, officers, and directors, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer or director of a corporation; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (4) of this section, such designee must possess actual authority to make the certification on behalf of the party filing a notice, declaration, or information.

Note 1 to § 802.202: A sample certification may be found at the Committee's section of the Department of the Treasury website. *See* §§ 802.402(f) and 802.502(k) regarding filing procedures for transactions in which a U.S. public entity is a party to the transaction.

§ 802.203 Close proximity.

The term *close proximity* means, with respect to a military installation or another facility or property of the U.S. Government identified in this part, the area that extends outward one mile from the boundary of such military installation, facility, or property.

§ 802.204 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 802.205 Completion date.

The term *completion date* means, with respect to a transaction, the earliest date upon which the purchase, lease, or concession is made legally effective, or a change in rights that could result in a covered real estate transaction occurs.

Note 1 to § 802.205: See § 802.304 regarding the timing rule for a contingent equity interest.

§ 802.206 Concession.

The term *concession* means an arrangement, other than a purchase or lease, whereby a U.S. public entity grants a right to use real estate for the purpose of developing or operating infrastructure for a covered port. This term includes the assignment of a concession, in whole or in part, by the party who is not the U.S. public entity.

§ 802.207 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event.

§ 802.208 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers or, in the case of a partnership, the general partner;

(9) The appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The right to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

Note 1 to § 802.208: This definition is included herein for the purpose of determining whether a foreign person may be involved in a covered real estate transaction. For additional information, see the examples provided at § 800.208, as relevant.

§ 802.209 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of a particular financial instrument to exchange any such instrument for an equity interest.

§ 802.210 Covered port.

(a) The term *covered port* means, subject to paragraph (b) of this section, any port that is listed:

(1) In the Department of Transportation, Federal Aviation Administration's annual final enplanement data as a ''large hub airport,'' as that term is defined in 49 U.S.C. 40102;

(2) In the Department of Transportation, Federal Aviation Administration's annual final all-cargo landed weight data as an airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds;

(3) By the Department of Transportation, Federal Aviation Administration as a ''joint use airport,'' as that term is defined in 49 U.S.C. 47175;

(4) By the Department of Transportation, Maritime Administration as a commercial strategic seaport within the National Port Readiness Network; or

(5) By the Department of Transportation, Bureau of Transportation Statistics as a top 25 tonnage, container, or dry bulk port.

(b) For purposes of determining whether a port constitutes a covered port under paragraph (a) of this section,

(1) Any port that is added after February 13, 2020 to any of the lists described in paragraph (a) of this section shall be deemed not to be in effect as a covered port until 30 days after the port's addition to the relevant list maintained by the Department of Transportation; and

(2) In the context of a particular transaction, the covered ports in effect on the day immediately prior to, the earlier of, the date on which the parties sign a written document establishing the material terms of the transaction, or the completion date of the transaction, shall apply.

Note 1 to § 802.210: The lists described in paragraph (a) of this section are published on the Department of Transportation website.

§ 802.211 Covered real estate.

The term *covered real estate* means real estate that:

(a) Is, is located within, or will function as part of, a covered port; or

(b) Is located within:

(1) Close proximity of any military installation described in § 802.227(b) to (o), or another facility or property of the U.S. Government, in each case as identified in the list at part 1 or part 2 of appendix A to this part;

(2) The extended range of any military installation described in § 802.227(h), (k), or (m), as identified in the list at part 2 of appendix A to this part;

(3) Any county or other geographic area identified in connection with any military installation described in § 802.227(a), as identified in the list at part 3 of appendix A to this part; or

(4) Any part of a military installation described in § 802.227(p), as identified at part 4 of appendix A to this part, to the extent located within the limits of the territorial sea of the United States.

§ 802.212 Covered real estate transaction.

The term *covered real estate transaction* means:

(a) Other than an excepted real estate transaction, any purchase or lease by, or concession to, a foreign person of covered real estate, that affords the foreign person at least three of the property rights under § 802.233;

(b) Other than an excepted real estate transaction, any purchase or lease by, or concession to, a foreign person of covered real estate, that, through a subsequent change in the rights that a foreign person has with respect to that covered real estate, results in the foreign person having at least three of the property rights under § 802.233; or

(c) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721 as it relates to real estate transactions.

Note 1 to § 802.212: Any transaction, transfer, agreement, or arrangement described in this section that arises pursuant to a bankruptcy proceeding or other form of default on debt is a covered real estate transaction. See also § 802.303 for the treatment of certain lending transactions.

§ 802.213 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the U.S. Government, a subnational government within the United States, and any of their respective departments, agencies, or instrumentalities).

§ 802.214 Excepted real estate foreign state.

The term *excepted real estate foreign state* means, until February 13, 2022, a foreign state that meets the criteria in paragraph (a) of this section, and beginning on February 13, 2022, a foreign state that meets both the criteria in paragraphs (a) and (b) of this section:

(a) Is identified by the Committee as an eligible foreign state and

(b) Is a foreign state for which the Committee has made a determination under § 802.1001(a).

Note 1 to § 802.214: The name of each foreign state identified by the Committee as an eligible foreign state will be available at the Committee's section of the Department of the Treasury website. See § 802.1001(c) regarding the publication of a notice in the **Federal Register** of a determination under § 802.1001(a). The list of excepted real estate foreign states will also be available at the Committee's section of the Department of the Treasury website.

§ 802.215 Excepted real estate investor.

(a) The term *excepted real estate investor* means a foreign person who is, as of the completion date of the transaction and subject to paragraphs (c) and (d) of this section:

(1) A foreign national who is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(2) A foreign government of an excepted real estate foreign state; or

(3) A foreign entity that meets each of the following conditions with respect to itself and each of its parents (if any):

(i) Such entity is organized under the laws of an excepted real estate foreign state or in the United States;

(ii) Such entity has its principal place of business in an excepted real estate foreign state or in the United States;

(iii) Seventy-five percent or more of the members and 75 percent or more of the observers of the board of directors or equivalent governing body of such entity are:

(A) U.S. nationals; or

(B) Nationals of one or more excepted real estate foreign states who are not also nationals of any foreign state that is not an excepted real estate foreign state;

(iv) Any foreign person that individually, and each foreign person that is part of a group of foreign persons that in the aggregate, holds 10 percent or more of the outstanding voting interest of such entity; holds the right to 10 percent or more of the profits of such entity; holds the right in the event of dissolution to 10 percent or more of the assets of such entity; or otherwise could exercise control over such entity, is:

(A) A foreign national who is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(B) A foreign government of an excepted real estate foreign state; or

(C) A foreign entity that is organized under the laws of an excepted real estate foreign state and has its principal place of business in an excepted real estate foreign state or in the United States; and

(v) The minimum excepted ownership of such entity is held, individually or in the aggregate, by one or more persons each of whom is:

(A) Not a foreign person;

(B) A foreign national who is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(C) A foreign government of an excepted real estate foreign state; or

(D) A foreign entity that is organized under the laws of an excepted real estate foreign state and has its principal place of business in an excepted real estate foreign state or in the United States.

(b) For purposes of paragraph (a)(3)(iv) of this section, foreign persons who are related, have formal or informal arrangements to act in concert, or are agencies or instrumentalities of, or controlled by, the national or subnational governments of a single foreign state are considered part of a group of foreign persons and their individual ownerships are aggregated.

(c) Notwithstanding paragraph (a) of this section, a foreign person is not an excepted real estate investor with respect to a transaction if:

(1) In the five years prior to the completion date of the transaction the foreign person, any of its parents, or any entity of which it is a parent:

(i) Has received written notice from the Committee that it has submitted a material misstatement or omission in a notice or declaration or made a false certification under this part or part 800 or 801 of this chapter;

(ii) Has received written notice from the Committee that it has violated a material provision of a mitigation agreement entered into with, material condition imposed by, or an order issued by, the Committee or a lead agency under section 721(l);

(iii) Has been subject to action by the President under section 721(d);

(iv) Has:

(A) Received a written Finding of Violation or Penalty Notice imposing a civil monetary penalty from the Department of the Treasury, Office of Foreign Assets Control (OFAC); or

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(v) Has received a written notice of debarment from the Department of State, Directorate of Defense Trade Controls, as described in 22 CFR parts 127 and 128;

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce, Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*), the Export Administration Regulations (15 CFR parts 730–774), or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(vii) Has received a final decision from the Department of Energy, National Nuclear Security Administration imposing a civil penalty with respect to a violation of section 57 b. of the Atomic Energy Act of 1954, as implemented under 10 CFR part 810; or

(viii) Has been convicted of, or has entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to, any felony in any jurisdiction within the United States; or

(2) The foreign person, any of its parents, or any entity of which it is a parent is, on the date on which the parties to the transaction first execute a binding written agreement, or other binding document, establishing the material terms of the transaction, listed

on either the BIS Unverified List or Entity List in 15 CFR part 744.

(d) Irrespective of whether the foreign person satisfies the criteria in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date the foreign person no longer meets all the criteria set forth in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section, the foreign person is not an excepted real estate investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted real estate investor no longer meets any of the criteria solely due to a rescission of a determination under § 802.1001(b) or if the relevant foreign state otherwise ceases to be an excepted real estate foreign state.

(e) A foreign person may waive its status as an excepted real estate investor with respect to a transaction at any time by submitting a declaration under § 802.401 or filing a notice under § 802.501 regarding the transaction in which it explicitly waives such status. In such case, the foreign person will be deemed not to be an excepted real estate investor with respect to the transaction, and the relevant provisions of subpart D or E will apply.

Note 1 to § 802.215: See § 802.501(c)(2) regarding an agency notice where a foreign person is not an excepted real estate investor solely due to paragraph (d) of this section.

§ 802.216 Excepted real estate transaction.

The term *excepted real estate transaction* means the following:

(a) A purchase or lease by, or concession to, an excepted real estate investor of covered real estate, or a change in rights of an excepted real estate investor with respect to covered real estate.

(b) A covered transaction as defined in part 800 of this chapter that includes the purchase, lease, or concession of covered real estate.

(c) The purchase, lease, or concession of covered real estate that is within an urbanized area or urban cluster, except for real estate that is subject to paragraph (a) or (b)(1) of § 802.211.

(d) The purchase, lease, or concession of covered real estate that is a single housing unit, including fixtures and adjacent land to the extent that such fixtures and land are incidental to the use of the real estate as a single housing unit.

(e) The lease by or a concession to a foreign person of covered real estate under paragraph (a) of § 802.211 if:

(1) The foreign person is a foreign air carrier, as that term is defined in 49 U.S.C. 40102(a)(21), for whom the Department of Homeland Security, Transportation Security Administration has accepted a security program under 49 CFR 1546.105, but only to the extent that the lease or concession is in furtherance of its activities as a foreign air carrier; or

(2) According to the terms of the lease or concession, the covered real estate may be used only for the purpose of engaging in the retail sale of consumer goods or services to the public.

(f) The purchase or lease by, or concession to, a foreign person of commercial space in a multi-unit building that is covered real estate, if, upon the completion of the transaction:

(1) The foreign person and its affiliates do not, in the aggregate, hold, lease, or have a concession with respect to commercial space in such building that exceeds 10 percent of the total square footage of the commercial space of such building; and

(2) The foreign person and its affiliates (each counted separately) do not represent more than 10 percent of the total number of tenants based on the number of ownership, lease and concession arrangements for commercial space in the building.

(g) The purchase or lease by, or a concession to, a foreign person of covered real estate either:

(1) Owned by an Alaska ''Native village,'' ''Native group,'' or ''Native Corporation'' as those terms are defined in the Alaska Native Claims Settlement Act at 43 U.S.C. 1602; or

(2) Held in trust by the United States for American Indians, Indian tribes, Alaska Natives, or any of the entities set forth in paragraph (g)(1) of this section.

(h) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, a U.S. business. Corporation X is in the business of owning and leasing real estate, including real estate properties that are in close proximity to military installations identified in part 1 and part 2 of appendix A to this part. As the sole owner of Corporation X, Corporation A will have control over Corporation X. The proposed transaction is not a covered real estate transaction but is a covered transaction under part 800 of this chapter.

(2) *Example 2.* Same facts as the example in paragraph (h)(1) of this section. After the transaction contemplated in Example 1 of this section is completed, Corporation X leases from another person a tract of land that is in close proximity to a military installation identified in part 1 of appendix A to this part. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction but only with respect to the new lease.

(3) *Example 3.* Corporation A, a foreign person, seeks to purchase from Corporation X an empty warehouse located in close proximity to a military installation identified in part 2 of appendix A to this part. Assuming no other relevant facts, the purchase of the covered real estate is not a covered transaction subject to part 800 of this chapter because Corporation A has not acquired a U.S. business, and the purchase is a covered real estate transaction.

(4) *Example 4.* Same facts as the example in paragraph (h)(3) of this section, except that, in addition to the proposed purchase of Corporation X's empty warehouse, Corporation A would also acquire from Corporation X the personnel, customer list, equipment, and inventory management software used to operate the warehouse. Under these facts, Corporation A is acquiring a U.S. business, and the proposed transaction is a covered transaction subject to part 800 of this chapter and therefore not a covered real estate transaction.

(5) *Example 5.* Corporation A, a foreign person, purchases covered real estate that is undeveloped and in close proximity to a military installation identified in part 1 of appendix A to this part. Corporation A, through a newly incorporated U.S. subsidiary, intends to use the covered real estate to set up a manufacturing facility. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, the purchase of the covered real estate is not a covered transaction subject to part 800 of this chapter, and Corporation A's purchase of the covered real estate is a covered real estate transaction.

(6) *Example 6.* A foreign person purchases real estate. The nearest military installation is one that is identified in part 2 of appendix A to this part and is 40 miles away (*i.e.,* in the extended range) from the real estate. The real estate is located in a statistical geographic area with a population of 125,000 individuals. Assuming no other relevant facts, the transaction is not a covered real estate transaction because the covered real estate is located in an urbanized area.

(7) *Example 7.* Same facts as the example in paragraph (h)(6) of this section, except that the covered real estate is not located in an urbanized area or an urban cluster. Assuming no other relevant facts, the real estate transaction is a covered real estate transaction.

(8) *Example 8.* A foreign person purchases real estate that is 0.25 miles from a military installation identified in part 1 of appendix A to this part. The real estate is located in an urbanized area. Assuming no other relevant facts, the real estate transaction is a covered real estate transaction because it is in close proximity to a military installation listed in part 1 of appendix A to this part.

(9) *Example 9.* A foreign person purchases a single housing unit, including the one acre of land surrounding it, within 0.5 miles from a military installation identified in part 1 of appendix A to this part. Each home in the neighborhood sits on a separate lot, each of which is approximately one acre in size. The acre of land surrounding the housing unit is incidental to use of the land as a single housing unit, and the real estate transaction

therefore is not a covered real estate transaction.

(10) *Example 10.* Same facts as the example in paragraph (h)(9) of this section, except that the foreign person also purchases an adjacent five acres of undeveloped land a year later. Assuming no other relevant facts, the purchase of the adjacent land is a covered real estate transaction.

(11) *Example 11.* A foreign person leases five percent of the total commercial space in a building located 0.5 miles from a military installation identified in part 1 of appendix A to this part. There are nine other tenants that have leases for commercial space with the building owner. Assuming no other relevant facts, the transaction is a not a covered real estate transaction.

Note 1 to § 802.216: With respect to paragraph (d) of this section, for purposes herein, fixtures and land may be considered incidental if the size and nature of such is common for similar single housing units in the locality in which the unit is located.

§ 802.217 Extended range.

The term *extended range* means, with respect to any military installation identified in § 802.227(h), (k), or (m), as listed in part 2 of appendix A to this part, the area that extends 99 miles outward from the outer boundary of close proximity to such military installation, but, where applicable, not exceeding the outer limit of the territorial sea of the United States.

§ 802.218 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that can demonstrate that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

§ 802.219 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the U.S. Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

§ 802.220 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 802.221 Foreign person.

(a) The term *foreign person* means:

(1) Any foreign national, foreign government, or foreign entity; or

(2) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

(b) Any entity over which control is exercised or exercisable by a foreign person is a foreign person.

(c) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and operating only outside the United States, is not a foreign entity due to § 802.218(b) and is not a foreign person.

(2) *Example 2.* Same facts as the first sentence of the example in paragraph (c)(1) of this section. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A because a law establishing Corporation A gives the foreign state the right to appoint Corporation A's board members. Corporation A is a foreign person.

(3) *Example 3.* Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

(5) *Example 5.* Corporation A is organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the equity interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement with any other holder of equity interest in Corporation A to act in concert regarding Corporation A. Corporation A can demonstrate that the remainder of the equity interest in Corporation A is ultimately held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign entity or foreign person.

(6) *Example 6.* Same facts as the example in paragraph (c)(5) of this section, except that one of the foreign investors, a foreign national, controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity due to § 802.218(b), but it is a foreign person under paragraph (a)(2) of this section because it is controlled by a foreign national.

§ 802.222 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

§ 802.223 Housing unit.

The term *housing unit* means a single family house, townhome, mobile home or trailer, apartment, group of rooms, or single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters.

§ 802.224 Investment fund.

The term *investment fund* means any entity that is an ''investment company,'' as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or would be an ''investment company'' but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

§ 802.225 Lead agency.

The term *lead agency* means the Department of the Treasury and any other agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 802.226 Lease.

(a) The term *lease* means an arrangement conveying a possessory interest in real estate, short of ownership, to a person for a specified time and in exchange for consideration. This term includes subleases and assignments in whole or part.

(b) Examples:

(1) *Example 1.* Foreign person A enters into an arrangement with a neighbor that allows the foreign person to use a private road running across the neighbor's land. The road will remain owned by the neighbor following the arrangement. The neighbor will also retain physical possession of his land despite the foreign person having permission to traverse the land while using the road. The arrangement does not convey a possessory interest in real estate. Assuming no other relevant facts, the foreign person has not entered into a lease.

(2) *Example 2.* Same facts as the example in paragraph (b)(1) of this section, except that

the foreign person's arrangement with the neighbor gives the foreign person the exclusive right to occupy a portion of the neighbor's land and attach fixtures to the surface, in exchange for a fee for a specified period of time. The foreign person can unilaterally adjust, remove, and make other changes to the fixtures. The foreign person has entered into a lease.

Note 1 to § 802.226: See § 800.249(a)(5) for certain long-term leases and concessions that could be subject to part 800 of this chapter.

§ 802.227 Military installation.

The term *military installation* means any site that meets the following category descriptions, as identified in the list at appendix A to this part:

(a) Active Air Force ballistic missile fields;

(b) Air Force bases administering active Air Force ballistic missile fields;

(c) Air Force bases and major annexes thereof containing a unit from the Air Force Air Combat Command;

(d) Air Force bases and major annexes thereof containing an Air Force research laboratory or test unit and associated sites;

(e) Air Force bases and major annexes thereof containing a unit of the North American Aerospace Defense Command and its regions;

(f) Air Force bases and Air Force stations and major annexes thereof containing satellite, telemetry, tracking, or commanding systems;

(g) Army bases, ammunition plants, centers of excellence and research laboratories and major annexes thereof, excluding depots, arsenals, and airfields that are not collocated with an Army installation included in this section;

(h) Army combat training centers located in the continental United States;

(i) Headquarters of the Office of the Secretary of Defense and Defense Advanced Research Projects Agency and major offices and annexes thereof;

(j) Long range radar sites and major annexes thereof in any of the following states: Alaska, North Dakota, California, or Massachusetts;

(k) Major range and test facility base activities as defined in 10 U.S.C. 196;

(l) Marine Corps bases and air stations and major annexes thereof, excluding detachments, installations, logistics battalions, recruit depots, and support facilities;

(m) Military ranges as defined in 10 U.S.C. 101(e)(1) owned by the Navy or Air Force, or joint forces training centers that are located in any of the following states: Oregon, Nevada, Idaho, Wisconsin, Mississippi, North Carolina, or Florida;

(n) Naval bases and air stations containing squadrons and supporting commands of the Submarine Force Atlantic or Submarine Force Pacific and major offices thereof;

(o) Naval surface, air, and undersea warfare centers and research laboratories and major annexes thereof; and

(p) Navy off-shore range complexes and off-shore operating areas.

§ 802.228 Minimum excepted ownership.

The term *minimum excepted ownership* means:

(a) With respect to an entity whose equity securities are primarily traded on an exchange in an excepted real estate foreign state or the United States, a majority of its voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets; and

(b) With respect to an entity whose equity securities are not primarily traded on an exchange in an excepted real estate foreign state or the United States, 80 percent or more of its voting interest, the right to 80 percent or more of its profits, and the right in the event of dissolution to 80 percent or more of its assets.

§ 802.229 Parent.

(a) The term *parent* means, with respect to an entity:

(1) A person who or which directly or indirectly:

(i) Holds or will hold at least 50 percent of the outstanding voting interest in the entity; or

(ii) Holds or will hold the right to at least 50 percent of the profits of the entity, or has or will have the right in the event of dissolution to at least 50 percent of the assets of the entity; or

(2) The general partner, managing member, or equivalent of the entity.

(b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.,* the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

(c) Examples:

(1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S; Corporation R holds 40 percent of the voting interest in Corporation X; and Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

(2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

(3) *Example 3.* Investor A holds 60 percent of the outstanding voting interest in Corporation B. Investor C holds the right to 80 percent of the profits of Corporation B. Each of Investor A and Investor C is a parent of Corporation B.

§ 802.230 Party to a transaction.

(a) The term *party to a transaction* means:

(1) In the case of a purchase, the person acquiring the ownership interest, the person from whom such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(2) In the case of a lease, the person acquiring the possessory interest, and the person from whom such possessory interest is acquired;

(3) In the case of a concession, the person receiving the right to use the covered real estate, and the U.S. public entity;

(4) In the case of a change in rights that a person has with respect to covered real estate as a result of a purchase, lease, or concession, the person whose rights change as a result of the transaction, and the person conveying those rights; and

(5) In the case of any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transaction, transfer, agreement, or arrangement.

(6) In all cases, each party that submitted a declaration or notice to the Committee regarding a transaction.

(b) For purposes of section 721(l), the term *party to a transaction* includes any affiliate of any party described in paragraph (a) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

§ 802.231 Person.

The term *person* means any individual or entity.

§ 802.232 Principal place of business.

(a) The term *principal place of business* means, subject to paragraph (b) of this section, the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent.

(b) If the location determined under paragraph (a) of this section is in the United States and the entity has represented to the U.S. Government or a subnational government of the United States or any foreign government, in the most recent submission or filing to such government (other than a submission or filing to the Committee) in which the entity has identified its principal place of business, principal office and place of business, address of principal executive offices, address of headquarters, or equivalent, that any of the foregoing is outside the United States, then the location identified in such submission or filing is deemed for purposes of this definition to be the entity's principal place of business unless the entity can demonstrate that such location has changed to the United States since such submission or filing.

§ 802.233 Property right.

(a) The term *property right* means, with respect to real estate, any of the following rights or abilities, whether or not exercised, whether or not shared concurrently with any other person, and whether or not the underlying real estate is subject to an easement or other encumbrance:

(1) To physically access the real estate;

(2) To exclude others from physically accessing the real estate;

(3) To improve or develop the real estate; or

(4) To attach fixed or immovable structures or objects to the real estate.

(b) Examples:

(1) *Example 1.* Corporation A, a foreign person, enters into a lease of real estate. Although at least one other person shares concurrently with Corporation A the right to access the property, Corporation A retains the right to physically exclude others from access that would interfere with its rights under the lease. Under the lease, Corporation A has the right to exclude others from physically accessing the real estate, and therefore affords the foreign person a property right.

(2) *Example 2.* Corporation A, a foreign person, enters into a lease of real estate that allows Corporation A to develop the real estate. The exercise of the right to develop the real estate is subject to Corporation A obtaining the appropriate regulatory permits. Notwithstanding the fact that Corporation A has not fully exercised its lease right pending the issuance of the permits, Corporation A is a party to lease that affords it a property right for purposes of this part.

§ 802.234 Purchase.

(a) The term *purchase* means an arrangement conveying an ownership interest in real estate to a person in exchange for consideration.

(b) Example: Person A, a foreign person, acquires covered real estate from Person B, a U.S. national, in exchange for land and services. Person A has purchased the covered real estate because the arrangement was predicated on consideration in the form of land and services.

§ 802.235 Real estate.

The term *real estate* means any land, including subsurface and submerged, or structure attached to land, including any building or any part thereof, that is located in the United States.

§ 802.236 Section 721.

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950, as amended (50 U.S.C. 4565).

§ 802.237 Transaction.

The term *transaction* means any purchase or lease by, or concession to, a person of real estate, whether proposed or completed.

§ 802.238 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the territorial sea of the United States. For purposes of these regulations and their examples in this part, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized ''in the United States.''

§ 802.239 Urban cluster.

The term *urban cluster* means a statistical geographic area as identified in the most recent U.S. Census consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 individuals but fewer than 50,000 individuals.

§ 802.240 Urbanized area.

The term *urbanized area* means a statistical geographic area as identified in the most recent U.S. Census consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have a minimum population of at least 50,000 individuals.

§ 802.241 U.S. business.

The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States.

Note 1 to § 802.241: See examples to definition in § 800.252.

§ 802.242 U.S. national.

The term *U.S. national* means an individual who is a U.S. citizen or an individual who, although not a U.S. citizen, owes permanent allegiance to the United States.

§ 802.243 U.S. public entity.

The term *U.S. public entity* means the U.S. Government, a subnational government of the United States, or any other body exercising governmental functions of the United States, including air and maritime port authorities. The term includes, but is not limited to, the respective departments, agencies, and instrumentalities of the U.S. Government and the subnational governments of the United States.

§ 802.244 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 802.301 Transactions that are covered real estate transactions.

Transactions that are covered real estate transactions include:

(a) A transaction that meets the criteria of § 802.212, including where a foreign person (other than an excepted real estate investor) enters into a purchase or lease of, or obtains a concession to, covered real estate either directly or indirectly. (See the examples in paragraphs (h)(1) and (2) of this section.)

(b) A purchase by a foreign person (other than an excepted real estate investor) of less than full ownership of covered real estate that nevertheless affords the foreign person at least three property rights with respect to the covered real estate. (See the example in paragraph (h)(3) of this section.)

(c) A purchase or lease by, or concession to, a foreign person (other than an excepted real estate investor) of real estate, a portion of which is covered real estate with respect to which the foreign person has at least three property rights. (See the example in paragraph (h)(4) of this section.)

(d) A purchase or lease by, or concession to, a foreign person (other than an excepted real estate investor) of a portion of covered real estate with respect to which the foreign person has at least three property rights. (See the

example in paragraph (h)(5) of this section.)

(e) A purchase, lease, or assignment of a concession, of covered real estate that meets the criteria of § 802.212 by one foreign person (other than an excepted real estate investor) from another foreign person. (See the example in paragraph (h)(6) of this section.)

(f) A purchase or lease by, or concession to, a foreign person (other than an excepted real estate investor) of covered real estate, that, through a subsequent change in the rights that a foreign person has with respect to covered real estate, results in the foreign person having at least three property rights. (See the example in paragraph (h)(7) of this section.)

(g) A transaction the structure of which is designed or intended to evade or circumvent the application of this part.

(h) Examples:

(1) *Example 1.* Corporation A, a foreign person, acquires Corporation X, a U.S. business. As a result, Corporation X is a foreign person. Subsequently, Corporation X purchases real estate that is in close proximity to a military installation identified in part 1 of appendix A to this part and obtains all of the property rights with respect to such real estate. Assuming no other relevant facts, the transaction is a covered real estate transaction.

(2) *Example 2.* Corporation A purchases covered real estate that is undeveloped land. Corporation A's only asset in the United States is the covered real estate, and Corporation A is not itself nor does it own a U.S. business. In a subsequent transaction, Corporation B, a foreign person, purchases 100 percent of the shares of Corporation A. Assuming no other relevant facts, the subsequent transaction as an indirect purchase of real estate is a covered real estate transaction.

(3) *Example 3.* Corporation A, a foreign person, together with Corporation B, a U.S. business, purchases real estate that is in close proximity to a military installation identified in part 2 of appendix A to this part. Neither party has full ownership; rather, the title to the real estate is held by the two parties jointly. Corporation A is afforded at least three property rights as a result of the transaction. Assuming no other relevant facts, the transaction is a covered real estate transaction.

(4) *Example 4.* Corporation A, a foreign person, purchases real estate. Half of such real estate is located in close proximity to a military installation identified in part 1 of appendix A to this part of and is therefore covered real estate. The other half of the real estate purchased by Corporation A is not located in close proximity to any such military installation. Assuming no other relevant facts, Corporation A's purchase is a covered real estate transaction.

(5) *Example 5.* Corporation A, a U.S. business, purchases covered real estate that is entirely located in close proximity to a military installation identified in part 2 of appendix A to this part. Corporation B, a foreign person, leases from Corporation A a part of that real estate. Corporation B is entitled to at least three property rights with respect to the real estate as a result of the transaction. Assuming no other relevant facts, Corporation B's lease is a covered real estate transaction.

(6) *Example 6.* Corporation A, a foreign person, purchases covered real estate and is afforded three property rights with respect to the covered real estate. In a subsequent transaction, Corporation B, another foreign person, leases the covered real estate from Corporation A, and is also afforded three property rights. Assuming no other relevant facts, each transaction is a covered real estate transaction.

(7) *Example 7.* Corporation A, a foreign person, leases from Person B covered real estate, and is afforded two property rights. Person B subsequently provides Corporation A an additional property right in connection with the lease. Assuming no other relevant facts, the lease is a covered real estate transaction because the subsequent change in rights results in the foreign person having at least three property rights.

§ 802.302 Transactions that are not covered real estate transactions.

Transactions that are not covered real estate transactions include:

(a) A transaction that meets the definition of excepted real estate transaction in § 802.216.

(b) A purchase or lease by, or concession to, a foreign person of covered real estate, or a subsequent change in rights, that does not afford or result in the foreign person having at least three of the property rights with respect to the covered real estate.

(c) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(d) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

§ 802.303 Lending transactions.

(a) The extension of a mortgage, loan, or similar financing arrangement by a foreign person to another person for the purpose of the purchase, lease, or concession of covered real estate, regardless of whether accompanied by the creation in favor of the foreign person of a secured interest in the covered real estate, shall not, by itself, constitute a covered real estate transaction.

(1) The Committee will accept notices or declarations concerning a mortgage, loan, or similar financing arrangement that does not, by itself, constitute a covered real estate transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that a purchase or lease by, concession to, or a change in rights involving a foreign person may result from the default or other condition and that would constitute a covered real estate transaction.

(2) Where the Committee accepts a notice or declaration concerning a mortgage, loan, or similar financing arrangement under paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes mortgages or loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer the ownership and property rights over the covered real estate to U.S. nationals or excepted real estate investors for purposes of determining whether such mortgage, loan, or financing arrangement constitutes a covered real estate transaction.

(b) Notwithstanding paragraph (a) of this section, a mortgage, loan, or similar financing arrangement through which a foreign person acquires property rights over covered real estate may constitute a covered real estate transaction to the extent that the arrangement would constitute a purchase, lease, or concession under this part.

(c) Example: Corporation A, a foreign bank, makes a secured loan to Corporation B in order for Corporation B to purchase a building that constitutes covered real estate. The collateral for the loan is the building that Corporation B is purchasing, and upon default, Corporation A would obtain an ownership interest and be afforded at least three property rights with respect to the building. Corporation B defaults on the loan. Assuming no other relevant facts, the Committee would accept a notice or declaration of the imminent default or default transferring ownership of the building to Corporation A, which would constitute a covered real estate transaction.

§ 802.304 Timing rule for a contingent equity interest.

(a) For purposes of determining whether to include the rights that a holder of a contingent equity interest will acquire upon conversion of, or exercise of a right provided by, that interest in the Committee's analysis of whether a notified transaction is a covered real estate transaction, the Committee will consider factors that include:

(1) The imminence of conversion or satisfaction of contingent conditions;

(2) Whether conversion or satisfaction of contingent conditions depends on factors within the control of the acquiring party; and

(3) Whether the amount of interest and the rights that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction of contingent condition will not be included in the Committee's analysis of whether a notified or submitted transaction is a covered real estate transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

Subpart D—Declarations

§ 802.401 Procedures for declarations.

(a) A party or parties may submit a voluntary declaration of a transaction by submitting electronically the information set out in § 802.402, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website.

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee under this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 802.802.

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances regarding the transaction, and any material change in information provided or required to be provided to the Committee under § 802.402. Unless the Committee rejects the declaration on the basis of such material changes in accordance with § 802.404(a)(2)(i), such changes shall become part of the declaration filed by such persons under this section, and the certification required under § 802.403(d) shall apply to such changes.

(e) Parties to a transaction that have filed with the Committee a written notice regarding a transaction under § 802.501 or § 800.501 or a declaration under § 800.403 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the written approval of the Staff Chairperson.

§ 802.402 Contents of declarations.

(a) The party or parties submitting a voluntary declaration of a transaction under § 802.401 shall provide the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary declaration and to the transaction. (See also paragraphs (d), (e), and (f) of this section.)

(b) Other than as provided under paragraph (f) of this section, if fewer than all the parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 802.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted under § 802.401 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and the current holder(s) of interest in the real estate that are parties to, or, in applicable cases, the subject of the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

(2) The following information regarding the transaction in question:

(i) A brief description of the rationale for and nature of the transaction, including its structure (*e.g.,* purchase, lease, or concession) and term, whether the foreign person is acquiring a collection of assets or interest in an entity, and whether it is part of a larger project undertaken by the foreign person;

(ii) The total transaction value in U.S. dollars;

(iii) The status of the transaction, including the actual or expected completion date of the transaction;

(iv) All sources of financing for the transaction and any real estate agents/brokers involved; and

(v) A copy of the definitive documentation of the transaction, such as a purchase, lease, or concession agreement, or if none exists, the document establishing the material terms of the transaction, which in the context of a transaction involving a covered port, must be signed and dated.

(3) The following information regarding the real estate that is the subject of the transaction:

(i) The location, by address and geographic coordinates in decimal degrees to the fourth digit, of the real estate that is the subject of the transaction;

(ii) The name(s) of and distance(s) to any covered port, military installation, or any other facility or property of the U.S. Government as identified in this part and that is relevant to CFIUS jurisdiction given the location of the real estate.

(iii) A description of the real estate that is the subject of the transaction including the approximate size (in acres, feet, or other appropriate measurement); nature of the real estate (*e.g.,* zoning type and the major topographical or other features of the real estate); and current use of the real estate including any physical security measures.

(iv) A description of the plans of the foreign person with respect to the real estate and structures that are or will be on the real estate; and

(v) A description of any leases, licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate, including whether any involve the U.S. Government.

(4) A statement as to whether the foreign person will have any of the following rights or abilities with respect to the real estate as a result of the transaction:

(i) To physically access the real estate;

(ii) To exclude others from physically accessing the real estate;

(iii) To improve or develop the real estate; or

(iv) To attach fixed or immovable structures or objects to the real estate.

(5) The name of the ultimate parent of the foreign person.

(6) The address and principal place of business of the foreign person and its ultimate parent.

(7) A complete pre-transaction organizational chart (and post-transaction, if different) including, information that identifies the name, principal place of business, place of incorporation or other legal organization (for entities); nationality (for individuals); and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if

any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent.

(8) Information regarding all foreign government ownership in the foreign person's ownership structure, including nationality and percentage of ownership, as well as any rights that a foreign government holds, directly or indirectly, with respect to the foreign person.

(9) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities.

(10) A statement as to whether a party to the transaction is stipulating that the transaction is a covered real estate transaction and a description of the basis for the stipulation.

(11) A statement as to whether any party to the transaction has been party to another transaction previously notified or submitted to the Committee, and the case number assigned by the Committee regarding such transaction(s).

(12) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the holder of the real estate, the foreign person, any parent of the foreign person, or any person of which the foreign person is a parent, has been convicted in the last 10 years of a crime in any jurisdiction.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 802.202. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(e) A party that offers a stipulation under paragraph (c)(10) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered real estate transaction.

(f) In the case of a transaction where a U.S. public entity is a party to the transaction and is not submitting a declaration, the other party or parties to the transaction shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to the U.S. public entity.

§ 802.403 Beginning of 30-day assessment period.

(a) Upon receipt of a declaration submitted under § 802.401, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

(1) The Staff Chairperson has accepted the declaration and circulated the declaration to the Committee, and the date on which the assessment described in paragraph (b) of this section begins; or

(2) The Staff Chairperson has determined not to accept the declaration and circulate the declaration to the Committee because the declaration is incomplete, and an explanation of the material respects in which the declaration is incomplete.

(b) A 30-day period for assessment of a transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) During the 30-day assessment period, the Staff Chairperson may invite the parties to a covered real estate transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction.

(d) If the Committee notifies the parties to a transaction that have submitted a declaration under § 802.401 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 802.202. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(e) If a party fails to provide the certification required under paragraph (d) of this section, the Committee may, at its discretion, take any of the actions under § 802.405.

§ 802.404 Rejection, disposition, or withdrawal of declarations.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any declaration that does not comply with § 802.402 and so inform the parties promptly in writing;

(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 802.405:

(i) There is a material change in the covered real estate transaction as to which a declaration has been submitted; or

(ii) Information comes to light that contradicts material information provided in the declaration by the party (or parties); or

(3) Reject any declaration at any time after the declaration has been submitted, and so inform the parties promptly in writing, if the party (or parties) that submitted the declaration does not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the party (or parties) so request in writing and the Staff Chairperson grants that request in writing.

(b) The Staff Chairperson shall notify the party (or parties) that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a covered real estate transaction.

(c) Parties to a transaction that have submitted a declaration under § 802.401 may request in writing, at any time prior to the Committee taking action under § 802.405, that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(d) The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a covered real estate transaction to correct material errors or omissions, or describe material changes to the transaction, in the declaration submitted with respect to that covered real estate transaction.

(e) A party (or parties) may not submit more than one declaration for the same or a substantially similar transaction without approval from the Staff Chairperson.

Note 1 to § 802.404: See § 802.401(e) regarding the prohibition on submitting a declaration regarding the same transaction or a substantially similar transaction for which

a written notice has been filed, or a declaration submitted under part 800 of this chapter, without the approval of the Staff Chairperson.

§ 802.405 Committee actions.

(a) Upon receiving a declaration submitted under § 802.401 with respect to a covered real estate transaction, the Committee may, at the discretion of the Committee:

(1) If the Committee has reason to believe that the transaction may raise national security considerations, request that the parties to the transaction file a written notice under subpart E;

(2) Inform the parties to the transaction that the Committee is not able to conclude action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice under subpart E to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction;

(3) Initiate a unilateral review of the transaction under § 802.501(c); or

(4) Notify the parties in writing that the Committee has concluded all action under section 721 with respect to the transaction.

(b) The Committee shall take action under paragraph (a) of this section within the time period set forth in § 802.403(b).

Subpart E—Notices

§ 802.501 Procedures for notices.

(a) Except as otherwise prohibited under paragraph (j) of this section, a party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 802.502, including the certification required under paragraph (h) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under this part, and with respect to which the Committee has not informed the parties in writing that the Committee has concluded all action under section 721, may be a covered real estate transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered real estate transaction, and if the Committee determines that the transaction is a covered real estate transaction, to file a notice of such covered real estate transaction under paragraph (a) of this section.

(c) With respect to any covered real estate transaction:

(1) Any member of the Committee, or his or her designee at or above the Under Secretary or equivalent level, may, subject to paragraph (c)(2) of this section, file an agency notice to the Committee through the Staff Chairperson regarding a transaction if:

(i) That member has reason to believe that the transaction is a covered real estate transaction and may raise national security considerations and:

(A) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(B) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; or

(ii) The transaction is a covered real estate transaction and:

(A) The Committee has informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction or determined that such transaction is not a covered real estate transaction, or the President has announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; and

(B) Either:

(*1*) A party to such transaction submitted false or misleading material information to the Committee in connection with the Committee's consideration of such transaction or omitted material information, including material documents, from information submitted to the Committee; or

(*2*) A party to such transaction breaches a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach, and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is a transaction where a foreign person is not an excepted real estate investor due to the application of § 802.215(d), any member of the Committee, or his or her designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such transaction if:

(A) That member has reason to believe that the transaction is a covered real estate transaction and may raise national security considerations;

(B) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(C) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction.

(ii) No notice filed under this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 802.215(a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii), the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

(d) Notices filed under paragraph (c) of this section are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under paragraph (c)(1) of this section shall be made with respect to a real estate transaction more than three years after the completion date of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(e) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(f) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 802.502(h), the Staff Chairperson shall promptly inspect such notice for completeness.

(g) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-

notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee under this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 802.802.

(h) Information and other documentary material provided by any party to the Committee after the filing of a voluntary notice under this section shall be part of the notice, and shall be subject to the final certification required under § 802.502(l).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation under section § 802.502(j) that a transaction is a covered real estate transaction, the Committee shall provide comments on the draft or formal written notice or accept the formal written notice of a covered real estate transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(j) No party to a transaction may file a notice under paragraph (a) of this section if the transaction has been the subject of a declaration submitted under subpart D and the Committee has not yet taken any action with respect to the transaction under § 802.405.

§ 802.502 Contents of voluntary notices.

(a) If a party or the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary notice and to the transaction. (See also paragraph (k) of this section regarding U.S. public entities and paragraph (h) of this section and § 802.202 regarding certification requirements.)

(b) A voluntary notice filed under § 802.501 shall describe or provide, as applicable:

(1) The following information regarding the transaction in question:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, its scope, both within and outside of the United States, as applicable, whether the foreign person is acquiring a collection of assets or interest in an entity, and the extent to which it is part of a larger project undertaken by the foreign person;

(ii) The nature of the transaction, for example, whether the transaction involves a purchase, lease, or concession of real estate and the term, if any;

(iii) The name, United States address (if any), website address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the current holder of interest in the real estate that is the subject of the transaction;

(v) In the case that a U.S. public entity is a party to the covered real estate transaction, the name, telephone number, and email address of the primary point of contact for the U.S. public entity;

(vi) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vii) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the foreign person or foreign persons that will be afforded property rights with respect to the real estate that is the subject of the covered real estate transaction;

(viii) The actual or expected completion date of the transaction;

(ix) A good faith approximation of the fair market value of the interest acquired in the covered real estate in U.S. dollars, as of the date of the notice;

(x) The name of any and all financial institutions and real estate agents/brokers involved in the transaction, including as advisors, underwriters, or sources of financing for the transaction;

(xi) A copy of the definitive documentation of the transaction, such as a purchase, lease, or concession agreement, or if none exists, the document establishing the material terms of the transaction, which in the context of a transaction involving a covered port, must be signed and dated;

(xii) Whether the foreign person will have any of the following rights or abilities with respect to the real estate as a result of the transaction and any additional information regarding such property rights:

(A) To physically access the real estate;

(B) To exclude others from physically accessing the real estate;

(C) To improve or develop the real estate; or

(D) To attach fixed or immovable structures or objects to the real estate.

(2) A detailed description of real estate that is the subject of the transaction, including as applicable:

(i) The location, by address and geographic coordinates in decimal degrees to the 4th digit, of the real estate that is the subject of the covered real estate transaction;

(ii) A description of the real estate that is the subject of the covered real estate transaction including the approximate size (in acres, feet, or other appropriate measurement); nature of the real estate (*e.g.,* zoning type and the major topographical or other features of the real estate); current use of the real estate; and structures that are or will be on the real estate;

(iii) A description of any leases, licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate, including whether any involve the U.S. Government, as well as any feasibility studies conducted with respect to the real estate; and

(iv) The name(s) of and distance(s) to any relevant covered port, military installation, or any other facility or property of the U.S. Government as identified in this part, and that is relevant to CFIUS jurisdiction given the location of the real estate that is the subject of the transaction.

(3) With respect to the foreign person engaged in the transaction and its parents:

(i) A description of the business or businesses of the foreign person and its ultimate parent, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the real estate with respect to:

(A) Use and development of the real estate;

(B) Changing the nature of the real estate including building new structures or removing or altering current structures, including the anticipated dimensions and any physical security measures employed at the real estate; and

(C) Assigning, modifying, or terminating any leases, licenses, permits, easements, encumbrances, or other grants or approvals referred to in paragraph (b)(2)(iii) of this section;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an

agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls property rights or has or controls ownership interests, including contingent equity interest, of the foreign person that is a party to the transaction or any parent of the foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors (including other persons who perform the duties usually associated with such titles) of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any other contingent interest (for example, such as might arise from a lending transaction) in the foreign person that is a party to the transaction and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers with respect to control over the foreign person engaged in the transaction, and if there are any such rights or powers, their source (for example, a ''golden share,'' shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in any foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the real estate that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or equivalent governing body (including external directors and other persons who perform duties usually associated with such titles) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following ''personal identifier information,'' which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(*1*) Full name (last, first, middle name);

(*2*) All other names and aliases used;

(*3*) Business address;

(*4*) Country and city of residence;

(*5*) Date of birth, in the format MM/DD/YYYY;

(*6*) Place of birth;

(*7*) U.S. Social Security number (where applicable);

(*8*) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(*9*) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(*10*) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following ''business identifier information'' for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, website address, and email address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(c) The voluntary notice shall list any filings with, or reports to, agencies of the U.S. Government that have been or will be made with respect to the transaction prior to its completion, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

(d) In the case of the establishment of a joint venture in which one or more of the parties is contributing covered real estate, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made a purchase or lease, or been granted a concession to, the covered real estate that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(e) Parties filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under this section, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 802.501, and the certifications required under paragraphs (h) and (l) of this section shall apply to such amendments.

(f) Parties filing a voluntary notice shall include:

(1) A complete pre-transaction organizational chart (and post-transaction, if different) including, information that identifies the name, principal place of business, and place of incorporation or other legal organization (for entities); nationality (for individuals); and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent.

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government; and

(iii) The transaction has resulted or could result in a foreign person being afforded property rights with respect to covered real estate, and the reasons for its view, focusing in particular on any powers (for example, by virtue of an agreement, statute, or regulation) that the foreign person will have with regard to the covered real estate, and how those powers can or will be exercised.

(g) Parties filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the U.S. Government signatories; and

(2) Any party to the transaction (including such party's parents, subsidiaries, or entities under common control with the party) has been a party to a transaction previously notified to the Committee.

(h) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 802.202. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(i) Parties filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

(j) A party filing a voluntary notice may stipulate that the transaction is a covered real estate transaction. A stipulation offered by any party under this section must be accompanied by a detailed description of the basis for the stipulation. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered real estate transaction.

(k) In the case of a transaction where a U.S. public entity is a party to the transaction, the notifying party or parties may be the non-U.S. public entity. Each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to the U.S. public entity.

(l) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 802.202.) A sample certification may be found at the Committee's section of the Department of the Treasury website.

§ 802.503 Beginning of 45-day review period.

(a) The Staff Chairperson shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 802.502; and

(2) Disseminated the notice to all members of the Committee.

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson, or the Chairperson of the Committee has requested a notice under § 802.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(c) The Staff Chairperson shall promptly advise in writing all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to the transaction that is subject to the notice. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

§ 802.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 802.501 or § 802.502 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 802.502(l).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the review period specified by § 802.503, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered real estate transaction.

(d) Example: The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is selling covered real estate. The joint notice does not contain any information described under § 802.502 concerning the nature of the real estate. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

§ 802.505 Determination of whether to undertake an investigation.

(a) After a review of a notified transaction under § 802.503, the Committee shall undertake an investigation of any transaction that it has determined to be a covered real estate transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered real estate transaction under § 802.503, an investigation to determine the effects on national security of any covered real estate transaction that would result in control by a foreign person of critical infrastructure, as defined in § 800.214 of this title, of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered real estate transaction will not impair the national security of the United States.

§ 802.506 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 802.503, not to undertake an investigation of a notified covered real estate transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly inform the parties to a covered real estate transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 802.507 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 802.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered real estate transaction in writing of the commencement of an investigation.

§ 802.508 Completion or termination of investigation and report to the President.

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered real estate transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered real estate transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation under this paragraph with respect to a covered real estate transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, the term *extraordinary circumstances* means circumstances for which extending an investigation is necessary and the appropriate course of action, in the Chairperson's discretion, due to a force majeure event or to protect the national security of the United States.

§ 802.509 Withdrawal of notices.

(a) A party (or parties) to a transaction that has filed notice under § 802.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered real estate transaction before a notice is refiled under § 802.501; and

(ii) Interim protections to address specific national security concerns with the covered real estate transaction identified during the review or investigation of the covered real estate transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted under paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 802.701.

Subpart F—Committee Procedures

§ 802.601 General.

(a) In any assessment, review, or investigation of a covered real estate transaction, the Committee should consider the factors specified in section 721(f), as applicable, and, as appropriate, require the parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered real estate transaction;

(2) There is credible evidence to support a belief that any foreign person party to a covered real estate transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices and declarations.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties' description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered real estate transaction that the Committee identifies as having been notified to the Committee based upon the facts set forth in the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

§ 802.602 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 802.603 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

§ 802.604 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under subparts D or E imposed on the Committee shall be tolled during a lapse in appropriations.

Subpart G—Finality of Action

§ 802.701 Finality of actions under section 721.

All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to any covered real estate transaction. Subject to § 802.501(c)(1)(ii), such authority shall not be exercised if:

(a) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered real estate transaction;

(b) The parties to the transaction have been advised in writing under § 802.405(a)(4), § 802.506, or § 802.508(d) that the Committee has concluded all action under section 721 with respect to the covered real estate transaction; or

(c) The President has previously announced, under section 721(d), his or her decision not to exercise his or her authority under section 721 with respect to the covered real estate transaction.

Subpart H—Provision and Handling of Information

§ 802.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subpart D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered real estate transaction, shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the transaction. Parties to a transaction that have filed information with the Committee shall promptly advise the Staff Chairperson of any material changes to such information. If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, under the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials written in a foreign language shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required under section 721(l)(6)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(3)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 802.202. A sample certification may be found at the Committee's section of the Department of the Treasury website.

§ 802.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed with the Committee under this part, including information or documentary material filed under § 802.501(g), shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552 *et seq.*), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties;

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 802.509 or § 802.404(c), respectively, or where a notice or a declaration has been rejected under § 802.504(a) or § 802.404(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered real estate transaction; or

(4) Such information or documentary material was filed under subpart D and the parties do not subsequently file a notice under subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(e) The provisions of the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(d)) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart I—Penalties and Damages

§ 802.901 Penalties and damages.

(a) Any person who submits a declaration or notice with a material misstatement or omission or makes a false certification under § 802.402, § 802.403, or § 802.502 may be liable to the United States for a civil penalty not to exceed $250,000 per violation. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(b) Any person who violates a material provision of a mitigation agreement with, a material condition imposed by, or an order issued by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. For clarification, under the previous sentence, whichever penalty amount is greater may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

(c) A mitigation agreement entered into or amended under section 721(l) may include a provision providing for liquidated or actual damages for breaches of the agreement. The mitigation agreement shall specify the amount of any liquidated damages that are a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee may consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the agreement.

(d) A determination to impose penalties under paragraph (a) or (b) of this section must be made by the Committee. Notice of the penalty, including a written explanation of the conduct to be penalized and the amount of the penalty, shall be sent to the subject person electronically and by U.S. mail or courier service. Notice shall be deemed to have been effected by the earlier of the date of electronic transmission and the date of receipt of U.S. mail or courier service. For the purposes of this section, the term *subject person* means the person or persons who may be liable to the United States for a civil penalty.

(e) Upon receiving notice of a penalty to be imposed under paragraphs (a) through (c) of this section, the subject person may, within 15 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue any final penalty determination within 15 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

(f) The penalties and damages authorized in paragraphs (a) through (c) of this section may be recovered in a civil action brought by the United States in federal district court.

(g) Section 2 of the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), shall apply to all information provided to the Committee under section 721, including by any party to a covered real estate transaction.

(h) The penalties and damages available under this section are without prejudice to other penalties, civil or criminal, available under law.

(i) The imposition of a civil monetary penalty or damages under these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

§ 802.902 Effect of lack of compliance.

If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or a lead agency in coordination with the Staff Chairperson, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or a lead agency in coordination with the Staff Chairperson may, in addition to the authority of the Committee to impose penalties under section 721(h) and to unilaterally initiate a review of any covered real estate transaction under section 721(b)(1)(D)(iii):

(a) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

(b) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered real estate transaction initiated after the date of the determination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(c) Seek injunctive relief.

Subpart J—Foreign National Security Investment Review Regimes

§ 802.1001 Determinations.

(a) The Committee may determine at any time that a foreign state has made significant progress toward establishing and effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

(b) The Committee may rescind a determination under paragraph (a) of this section if the Committee determines that such a rescission is appropriate.

(c) The Chairperson of the Committee shall publish a notice of any determination or rescission of a determination under paragraph (a) or (b) of this section, respectively, in the **Federal Register**.

§ 802.1002 Effect of determinations.

(a) A determination under § 802.1001(a) shall take effect immediately upon publication of a notice of such determination under § 802.1001(c) and remain in effect unless rescinded under § 802.1001(b).

(b) A rescission of a determination under § 802.1001(b) shall take effect on

the date specified in the notice published under § 802.1001(c).

(c) A determination under § 802.1001(a) does not apply to any transaction for which a declaration or notice has been accepted by the Staff Chairperson under § 802.403(a)(1) or § 802.503(a), respectively.

(d) A rescission of a determination under § 802.1001(b) does not apply to any transaction for which:

(1) The completion date is prior to the date upon which the rescission of a determination under paragraph (b) of this section becomes effective; or

(2) Before publication of the rescission of determination under § 802.1001(c), the parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated.

Appendix A to Part 802—List of Military Installations and Other U.S. Government Sites

Site name	Location
Part 1	
Adelphi Laboratory Center	Adelphi, MD.
Air Force Maui Optical and Supercomputing Site	Maui, HI.
Air Force Office of Scientific Research	Arlington, VA.
Andersen Air Force Base	Yigo, Guam.
Army Futures Command	Austin, TX.
Army Research Lab—Orlando Simulations and Training Technology Center	Orlando, FL.
Army Research Lab—Raleigh Durham	Raleigh Durham, NC.
Arnold Air Force Base	Coffee County and Franklin County, TN.
Beale Air Force Base	Yuba City, CA.
Biometric Technology Center (Biometrics Identity Management Activity)	Clarksburg, WV.
Buckley Air Force Base	Aurora, CO.
Camp MacKall	Pinebluff, NC.
Cape Cod Air Force Station	Sandwich, MA.
Cape Newenham Long Range Radar Site	Cape Newenham, AK.
Cavalier Air Force Station	Cavalier, ND.
Cheyenne Mountain Air Force Station	Colorado Springs, CO.
Clear Air Force Station	Anderson, AK.
Creech Air Force Base	Indian Springs, NV.
Davis-Monthan Air Force Base	Tucson, AZ.
Defense Advanced Research Projects Agency	Arlington, VA.
Eareckson Air Force Station	Shemya, AK.
Eielson Air Force Base	Fairbanks, AK.
Ellington Field Joint Reserve Base	Houston, TX.
Fairchild Air Force Base	Spokane, WA.
Fort Benning	Columbus, GA.
Fort Belvoir	Fairfax County, VA.
Fort Bliss	El Paso, TX.
Fort Campbell	Hopkinsville, KY.
Fort Carson	Colorado Springs, CO.
Fort Detrick	Frederick, MD.
Fort Drum	Watertown, NY.
Fort Gordon	Augusta, GA.
Fort Hood	Killeen, TX.
Fort Knox	Fort Knox, KY.
Fort Leavenworth	Leavenworth, KS.
Fort Lee	Petersburg, VA.
Fort Leonard Wood	Pulaski County, MO.
Fort Meade	Anne Arundel County, MD.
Fort Riley	Junction City, KS.
Fort Shafter	Honolulu, HI.
Fort Sill	Lawton, OK.
Fort Stewart	Hinesville, GA.
Fort Yukon Long Range Radar Site	Fort Yukon, AK.
Francis E. Warren Air Force Base	Cheyenne, WY.
Guam Tracking Station	Inarajan, Guam.
Hanscom Air Force Base	Lexington, MA.
Holloman Air Force Base	Alamogordo, NM.
Holston Army Ammunition Plant	Kingsport, TN.
Joint Base Anacostia-Bolling	Washington, DC.
Joint Base Andrews	Camp Springs, MD.
Joint Base Elmendorf-Richardson	Anchorage, AK.
Joint Base Langley-Eustis	Hampton, VA and Newport News, VA.
Joint Base Lewis-McChord	Tacoma, WA.
Joint Base McGuire-Dix-Lakehurst	Lakehurst, NJ.
Joint Base Pearl Harbor-Hickam	Honolulu, HI.
Joint Base San Antonio	San Antonio, TX.
Joint Expeditionary Base Little Creek-Fort Story	Virginia Beach, VA.
Kaena Point Satellite Tracking Station	Waianae, HI.
King Salmon Air Force Station	King Salmon, AK.
Kirtland Air Force Base	Albuquerque, NM.
Kodiak Tracking Stations	Kodiak Island, AK.

Site name	Location
Los Angeles Air Force Base	El Segundo, CA.
MacDill Air Force Base	Tampa, FL.
Malmstrom Air Force Base	Great Falls, MT.
Marine Corps Air Ground Combat Center Twentynine Palms	Twentynine Palms, CA.
Marine Corps Air Station Beaufort	Beaufort, SC.
Marine Corps Air Station Cherry Point	Cherry Point, NC.
Marine Corps Air Station Miramar	San Diego, CA.
Marine Corps Air Station New River	Jacksonville, NC.
Marine Corps Air Station Yuma	Yuma, AZ.
Marine Corps Base Camp Lejeune	Jacksonville, NC.
Marine Corps Base Camp Pendleton	Oceanside, CA.
Marine Corps Base Hawaii	Kaneohe Bay, HI.
Marine Corps Base Hawaii, Camp H.M. Smith	Halawa, HI.
Marine Corps Base Quantico	Quantico, VA.
Mark Center	Alexandria, VA.
Minot Air Force Base	Minot, ND.
Moody Air Force Base	Valdosta, GA.
Naval Air Station Joint Reserve Base New Orleans	Belle Chasse, LA.
Naval Air Station Oceana	Virginia Beach, VA.
Naval Air Station Oceana Dam Neck Annex	Virginia Beach, VA.
Naval Air Station Whidbey Island	Oak Harbor, WA.
Naval Base Guam	Apra Harbor, Guam.
Naval Base Kitsap Bangor	Silverdale, WA.
Naval Base Point Loma	San Diego, CA.
Naval Base San Diego	San Diego, CA.
Naval Base Ventura County—Port Hueneme Operating Facility	Port Hueneme, CA.
Naval Research Laboratory	Washington, DC.
Naval Research Laboratory—Blossom Point	Welcome, MD.
Naval Research Laboratory—Stennis Space Center	Hancock County, MS.
Naval Research Laboratory—Tilghman	Tilghman, MD.
Naval Station Newport	Newport, RI.
Naval Station Norfolk	Norfolk, VA.
Naval Submarine Base Kings Bay	Kings Bay, GA.
Naval Submarine Base New London	Groton, CT.
Naval Surface Warfare Center Carderock Division—Acoustic Research Detachment	Bayview, ID.
Naval Support Activity Crane	Crane, IN.
Naval Support Activity Orlando	Orlando, FL.
Naval Support Activity Panama City	Panama City, FL.
Naval Support Activity Philadelphia	Philadelphia, PA.
Naval Support Facility Carderock	Bethesda, MD.
Naval Support Facility Dahlgren	Dahlgren, VA.
Naval Support Facility Indian Head	Indian Head, MD.
Naval Weapons Station Seal Beach Detachment Norco	Norco, CA.
New Boston Air Station	New Boston, NH.
Offutt Air Force Base	Bellevue, NE.
Oliktok Long Range Radar Site	Oliktok, AK.
Orchard Combat Training Center	Boise, ID.
Peason Ridge Training Area	Leesville, LA.
Pentagon	Arlington, VA.
Peterson Air Force Base	Colorado Springs, CO.
Picatinny Arsenal	Morris County, NJ.
Piñon Canyon Maneuver Site	Tyrone, CO.
Pohakuloa Training Area	Hilo, HI.
Point Barrow Long Range Radar Site	Point Barrow, AK.
Portsmouth Naval Shipyard	Kittery, ME.
Radford Army Ammunition Plant	Radford, VA.
Redstone Arsenal	Huntsville, AL.
Rock Island Arsenal	Rock Island, IL.
Rome Research Laboratory	Rome, NY.
Schriever Air Force Base	Colorado Springs, CO.
Seymour Johnson Air Force Base	Goldsboro, NC.
Shaw Air Force Base	Sumter, SC.
Southeast Alaska Acoustic Measurement Facility	Ketchikan, AK.
Tin City Long Range Radar Site	Tin City, AK.
Tinker Air Force Base	Midwest City, OK.
Travis Air Force Base	Fairfield, CA.
Tyndall Air Force Base	Bay County, FL.
U.S. Army Natick Soldier Systems Center	Natick, MA.
Watervliet Arsenal	Watervliet, NY.
Wright-Patterson Air Force Base	Dayton, OH.

Part 2

Aberdeen Proving Ground	Aberdeen, MD.
Camp Shelby	Hattiesburg, MS.
Cape Canaveral Air Force Station	Cape Canaveral, FL.
Dare County Range	Manns Harbor, NC.
Edwards Air Force Base	Edwards, CA.
Eglin Air Force Base	Valparaiso, FL.
Fallon Range Complex	Fallon, NV.
Fort Bragg	Fayetteville, NC.
Fort Greely	Delta Junction, AK.
Fort Huachuca	Sierra Vista, AZ.
Fort Irwin	San Bernardino County, CA.
Fort Polk	Leesville, LA.
Fort Wainwright	Fairbanks, AK.
Hardwood Range	Necehuenemedah, WI.
Hill Air Force Base	Ogden, UT.
Mountain Home Air Force Base	Mountain Home, ID.
Naval Air Station Meridian	Meridian, MS.
Naval Air Station Patuxent River	Lexington Park, MD.
Naval Air Weapons Station China Lake	Ridgecrest, CA.
Naval Base Kitsap—Keyport	Keyport, WA.
Naval Base Ventura County—Point Mugu Operating Facility	Point Mugu, CA.
Naval Weapons Systems Training Facility Boardman	Boardman, OR.
Nellis Air Force Base	Las Vegas, NV.
Nevada Test and Training Range	Tonopah, NV.
Pacific Missile Range Facility	Kekaha, HI.
Patrick Air Force Base	Cocoa Beach, FL.
Tropic Regions Test Center	Wahiawa, HI.
Utah Test and Training Range	Barro, UT.
Vandenberg Air Force Base	Lompoc, CA.
West Desert Test Center	Dugway, UT.
White Sands Missile Range	White Sands Missile Range, NM.
Yuma Proving Ground	Yuma, AZ.

Site name	County	Township/range
Part 3		
90th Missile Wing, Francis E. Warren Air Force Base Missile Field (Colorado, Nebraska, and Wyoming).	Logan, CO	All lands except those located south of Township 8 North and east of Range 51 West using the Bureau of Land Management's Public Lands Survey System.
	Morgan, CO	All lands located north of Township 3 North using the Bureau of Land Management's Public Lands Survey System.
	Sedgwick, CO	All lands except those located east of Range 46 West using the Bureau of Land Management's Public Lands Survey System.
	Washington, CO	All lands located north of Township 4 North, and west of Range 52 West using the Bureau of Land Management's Public Lands Survey System.
	Weld, CO	All lands located north of Township 4 North, and east of Range 64 West using the Bureau of Land Management's Public Lands Survey System.
	Banner, NE	All.
	Cheyenne, NE	All.
	Deuel, NE	All lands located south of Township 15 North, and west of Range 43 West using the Bureau of Land Management's Public Lands Survey System.
	Garden, NE	All lands located south of Township 19 North, and west Range 43 West using the Bureau of Land Management's Public Lands Survey System.
	Kimball, NE	All.
	Morrill, NE	All lands except those located north of Township 21 North using the Bureau of Land Management's Public Lands Survey System.
	Scotts Bluff, NE	All.
	Sioux, NE	All lands except those located north of Township 26 North, and east of Range 57 West using the Bureau of Land Management's Public Lands Survey System.
	Goshen, WY	All lands except those located north of Township 27 North using the Bureau of Land Management's Public Lands Survey System.
	Laramie, WY	All lands except those located south of Township 14 North, and west of Range 64 West using the Bureau of Land Management's Public Lands Survey System.

Site name	County	Township/range
	Platte, WY	All lands except those located north of Township 27 North using the Bureau of Land Management's Public Lands Survey System.
341st Missile Wing, Malmstrom Air Force Base Missile Field (Montana).	Blaine, MT	All lands except those located north of Township 24 North using the Bureau of Land Management's Public Lands Survey System.
	Cascade, MT	All.
	Chouteau, MT	All lands except those located north of Township 24 North, and east of Range 8 East using the Bureau of Land Management's Public Lands Survey System.
	Fergus, MT	All lands except those located east of Range 26 East using the Bureau of Land Management's Public Lands Survey System.
	Glacier, MT	All lands located south of Township 35 North, and east of Range 7 West, using the Bureau of Land Management's Public Lands Survey System.
	Golden Valley, MT	All lands except those located south of Township 11 North, and east of Range 20 East using the Bureau of Land Management's Public Lands Survey System.
	Judith Basin, MT	All.
	Lewis and Clark, MT	All lands except those located south of Township 14 North using the Bureau of Land Management's Public Lands Survey System.
	Liberty, MT	All lands except those located north of Township 31 North, and east of Range 5 East using the Bureau of Land Management's Public Lands Survey System.
	Meagher, MT	All lands except those located south of Township 12 North, and west of Range 9 East using the Bureau of Land Management's Public Lands Survey System.
	Musselshell, MT	All lands located north of Township 10 North, and west of Range 23 East using the Bureau of Land Management's Public Lands Survey System.
	Petroleum, MT	All lands located west of Range 27 East using the Bureau of Land Management's Public Lands Survey System.
	Phillips, MT	All lands located south of Township 23 North, and west of Range 25 East using the Bureau of Land Management's Public Lands Survey System.
	Pondera, MT	All lands except those located west of Range 9 West, using the Bureau of Land Management's Public Lands Survey System.
	Stillwater, MT	All lands located north of Township 3 North, and west of Range 20 East using the Bureau of Land Management's Public Lands Survey System.
	Sweet Grass, MT	All lands located north of Township 3 North, and east of Range 12 East using the Bureau of Land Management's Public Lands Survey System.
	Teton, MT	All lands except those located west of Range 10 West using the Bureau of Land Management's Public Lands Survey System.
	Toole, MT	All lands except those located north of Township 34 North using the Bureau of Land Management's Public Lands Survey System.
	Wheatland, MT	All.
91st Missile Wing, Minot Air Force Base Missile Field (North Dakota).	Bottineau, ND	All lands except those located east of Range 77 West using the Bureau of Land Management's Public Lands Survey System.
	Burke, ND	All lands except those located west of Range 93 West using the Bureau of Land Management's Public Lands Survey System.
	Dunn, ND	All lands located north of Township 148 North, using the Bureau of Land Management's Public Lands Survey System.
	McHenry, ND	All lands except those located north of Township 156 North, and east of Range 80 West using the Bureau of Land Management's Public Lands Survey System.
	McKenzie, ND	All lands located east of Range 95 West, using the Bureau of Land Management's Public Lands Survey System.
	McLean, ND	All lands except those located south of Township 145 North using the Bureau of Land Management's Public Lands Survey System.

Site name	County	Township/range
	Mercer, ND	All lands located north of Township 145 North, east of Range 90 West, using the Bureau of Land Management's Public Lands Survey System.
	Mountrail, ND	All.
	Pierce, ND	All lands located south of Township 155 North, west of Range 72 West using the Bureau of Land Management's Public Lands Survey System.
	Renville, ND	All.
	Sheridan, ND	All lands except those located south of Township 148 North, and east of Range 78 West using the Bureau of Land Management's Public Lands Survey System.
	Ward, ND	All lands except those located north of Township 155 North, and east of Range 83 West using the Bureau of Land Management's Public Lands Survey System.
	Williams, ND	All lands located south of Township 158 North, and east of Range 96 West using the Bureau of Land Management's Public Lands Survey System.

Site name	Location
Part 4	
Boston Range Complex	Offshore Massachusetts, New Hampshire, Maine.
Boston Operating Area	Offshore Massachusetts, New Hampshire, Maine.
Charleston Operating Area	Offshore North Carolina, South Carolina.
Cherry Point Operating Area	Offshore North Carolina, South Carolina.
Corpus Christi Operating Area	Offshore Texas.
Eglin Gulf Test and Training Range	Offshore Florida.
Gulf of Mexico Range Complex	Offshore Mississippi, Alabama, Florida.
Hawaii Range Complex	Offshore Hawaii.
Jacksonville Operating Area	Offshore Florida, Georgia.
Jacksonville Range Complex	Offshore Florida.
Key West Operating Area	Offshore Florida.
Key West Range Complex	Offshore Florida.
Narragansett Bay Range Complex	Offshore Connecticut, Massachusetts, New York, Rhode Island.
Narragansett Bay Operating Area	Offshore Connecticut, Massachusetts, New York, Rhode Island.
New Orleans Operating Area	Offshore Louisiana.
Northern California Range Complex	Offshore California.
Northwest Training Range Complex	Offshore Oregon, Washington.
Panama City Operating Area	Offshore Florida.
Pensacola Operating Area	Offshore Alabama, Florida.
Point Mugu Sea Range	Offshore California.
Southern California Range Complex	Offshore California.
Virginia Capes Operating Area	Offshore Delaware, Maryland, North Carolina, Virginia.
Virginia Capes Range Complex	Offshore Delaware, Maryland, North Carolina, Virginia.

Dated: January 6, 2020.

Thomas Feddo,

Assistant Secretary for Investment Security.

[FR Doc. 2020–00187 Filed 1–13–20; 4:15 pm]

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Part IV

Department of Education

2 CFR Part 3474

34 CFR Parts 75, 76, 106, et al.

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program; Proposed Rule

DEPARTMENT OF EDUCATION

2 CFR Part 3474

34 CFR Parts 75, 76, 106, 606, 607, 608, and 609

[Docket ID ED–2019–OPE–0080]

RIN 1840–AD45

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to the United States Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer* (2017), the United States Attorney General's October 6, 2017 Memorandum on Federal Law Protections for Religious Liberty,and Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative), the Department proposes revising the current regulations regarding the eligibility of faith-based entities to participate in the Department's Direct Grant programs, State-Administered Formula Grant programs, and discretionary grant programs authorized under title III and V of the Higher Education Act of 1965, as amended (HEA), and the eligibility of students to obtain certain benefits under those programs. Additionally, in response to E.O. 13864 (Improving Free Inquiry, Transparent, and Accountability at Colleges and Universities), the Department proposes to revise the current regulations to encourage institutions to foster environments that promote open, intellectually engaging, and diverse debate, including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech, including academic freedom, for private institutions.

DATES: Comments must be received by the Department on or before February 18, 2020.

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

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 400 Maryland Avenue SW, Mail Stop 294–20, Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: For information related to faith-based issues, contact Lynn Mahaffie at (202) 453–7862 or by email at *Lynn.Mahaffie@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of Part 1 (Religious Liberty) of This Regulatory Action:

In response to the Supreme Court's decision in *Trinity Lutheran*,[1] E.O. 13798, and the U.S. Attorney General Memorandum on Federal Law Protections for Religious Liberty (October 6, 2017) (hereinafter ''Memorandum on Religious Liberty''),[2] the Department engaged in a full review of its regulations. On July 31, 2018, the Department announced its intent to negotiate regulations relating to the eligibility of faith-based entities to participate in the title IV, HEA programs.[3] The Department ultimately achieved a consensus agreement on those regulations and will publish a separate notice of proposed rulemaking reflecting that agreement. The Department now seeks to apply some of the principles of the consensus agreement, including avoiding unconstitutional discrimination against faith-based entities, to these non-title IV regulations (where negotiated rulemaking is not required), to fulfill the requirements of the Executive orders mentioned above, and to align its regulations with *Trinity Lutheran* and the Memorandum on Religious Liberty. Specifically, the Secretary proposes to:

- Modify Uniform Administrative Requirements to clarify that faith-based organizations and subgrantees are eligible to receive a grant or subgrant under a program of the Department on the same basis as any other private organization, ensure nondiscrimination against faith-based organizations, and strengthen religious freedom protections.
- Modify the Education Department General Administrative Regulations (EDGAR) to clarify that a faith-based organization is eligible to apply for and receive a grant under a program of the Department or subgrant from a State under a State-Administered Formula Grant program of the Department, on the same basis as any other private organization;
- Remove requirements on faith-based organizations that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department to provide assurances or notices where similar requirements are not imposed on non-faith-based organizations;
- Clarify that a faith-based organization that participates in Department-funded programs retains its autonomy, right of expression, religious character, and independence from Federal, State, and local governments;
- Ensure that faith-based and non-faith-based organizations shall, on equal terms, be eligible to obtain, use, and keep grant funds;

[1] 137 S. Ct. 2012 (2017).

[2] U.S. Att'y Gen. Memorandum on Federal Law Protections for Religious Liberty (Oct. 6, 2017), *https://www.justice.gov/opa/press-release/file/1001891/download.*

[3] 83 FR 36814.

• Require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive Federal funding by stating, among other things, that faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the Constitution;

• Incorporate the definition of ''religious exercise'' from the Religious Freedom Restoration Act of 1993 [4] (hereinafter ''RFRA'') and amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's decision in *Zelman* v. *Simmons-Harris* (2002); [5]

• Add a non-exhaustive list of criteria that offers educational institutions different methods to demonstrate that they are eligible to claim an exemption to the application of Title IX, 20 U.S.C. 1681, and its implementing regulations to the extent Title IX and its implementing regulations would not be consistent with the institutions' religious tenets or practices; and

• Amend regulations governing the Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and University Program, and Strengthening Historically Black Graduate Institutions Program by removing language that prohibits use of funds for otherwise allowable activities if they merely relate to ''religious worship'' and ''theological subjects'' and replace it with language that more narrowly defines the limitations.

Purpose of Part 2 (Free Inquiry) of This Regulatory Action: In response to the President's E.O. 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, the Secretary proposes to ensure institutions of higher education, as defined in 20 U.S.C. 1002(a), that are public (hereinafter ''public institutions of higher education'' or ''public institutions'') and receive Federal research or education grants, as defined in E.O. 13864, from the Department comply with the First Amendment to the United States Constitution. The Secretary also proposes to ensure institutions of higher education, as defined in 20 U.S.C. 1002(a), that are private (hereinafter ''private institutions of higher education'' or ''private institutions'') and receive Federal research or education grants, as defined in E.O. 13864, comply with their stated institutional policies, regarding freedom of speech, including academic freedom, by:

• Requiring public institutions that receive a Direct Grant or subgrant from a State-Administered Formula grant program of the Department to comply with the First Amendment, as a material condition of the grant;

• Requiring private institutions that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department to comply with their stated institutional policies on freedom of speech, including academic freedom, as a material condition of the grant; and

• Requiring that a public institution receiving a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department not deny to a faith-based student organization any of the rights, benefits, or privileges that are otherwise afforded to non-faith-based student organizations, as a material condition of the grant.

Summary of the Major Provisions of This Regulatory Action:

To restore religious liberty and prevent discrimination against faith-based organizations and to act in a manner consistent with our obligation to be neutral in matters of religion, we propose to remove and amend regulations that would impose burdens on faith-based organizations, provide special benefits to faith-based organizations, or treat faith-based organizations and religious individuals differently than other organizations or individuals.

To protect and preserve First Amendment freedoms at public institutions and to hold private institutions accountable to stated institutional policies regarding freedom of speech, including academic freedom, we propose to add regulations that require public institutions to comply with the First Amendment as a material condition of a grant and that require private institutions to comply with their stated institutional policies on freedom of speech, including academic freedom, as a material condition of a grant.

Please refer to the *Summary of Proposed Changes* section of this notice of proposed rulemaking (NPRM) for more details on the major provisions contained in this NPRM.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this NPRM, as we are not required to respond to such comments.

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

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

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

Background—Part 1 (Religious Liberty)

Shortly after taking office in 2001, President George W. Bush signed E.O.

[4] 42 U.S.C. 2000bb–2(4) (referring to 42 U.S.C. 2000cc–5(7)(A) (defining ''religious exercise'' as ''any exercise of religion, whether or not compelled by, or central to, a system of religious belief'')).

[5] 536 U.S. 639.

13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive order sought to ensure that ''private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field'' in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives, which would have primary responsibility to ''establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.''

On December 12, 2002, President Bush signed E.O. 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). E.O. 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, E.O. 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social services programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the order. Consistent with E.O. 13279, the Department promulgated regulations at 2 CFR part 3474, and 34 CFR parts 75 and 76 (''Parts 3474, 75, and 76'').

The Department amended several regulations that imposed unwarranted barriers to the participation of faith-based organizations in Department programs.[6] The amended regulations specifically provided that faith-based organizations are eligible to apply for and to receive funding under Department programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible. These regulations also clarified that a religious organization that participated in Department programs would retain its independence and could continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. Pursuant to these regulations, an organization that received a grant from the Department or that received a subgrant from a State under a State-Administered Formula Grant program of the Department would not be allowed to discriminate against a beneficiary or prospective beneficiary of that program on the basis of religion or religious belief. Among other revisions, the regulations clarified that faith-based organizations are eligible to contract with or otherwise receive assistance from grantees and subgrantees, including States, on the same basis as other private organizations.

President Obama maintained President Bush's program but modified it in certain respects. Shortly after taking office, President Obama signed E.O. 13498, Amendments to E.O. 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed E.O. 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). E.O. 13559 made various changes to E.O. 13279 including the following: Making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the first provider give notice of this right to the potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement E.O. 13279, as amended by E.O. 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social services providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, including the Department's parts 3474, 75, and 76, defining ''indirect assistance'' as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary.[7]

These regulations imposed burdens on faith-based organizations and treated faith-based organizations differently than other organizations.[8] The regulations not only required that faith-based providers give the notice of the right to an alternative provider specified in E.O. 13559, but also required faith-based providers, but not secular providers, to give written notice to beneficiaries and potential beneficiaries of programs funded with direct Federal financial assistance of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activities must be voluntary and that they must be provided separately from the federally funded activity, and that beneficiaries may report violations.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued E.O. 13798, the Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). E.O. 13798 states that ''Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.'' It further directed the Attorney General to ''issue guidance interpreting religious liberty protections in Federal law.''

Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668 (October 26, 2017) (''Memorandum on Religious Liberty'').The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing social services, and that ''government may not

[6] *See* Participation in Education Department Programs by Religious Organizations; Providing for Equal Treatment of All Education Program Participants, 69 FR 31708 (June 4, 2004).

[7] 2 CFR 3474.15; 34 CFR 75.52, 76.52.

[8] Federal Agency Final Regulations Implementing Executive Order 13599: Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 81 FR 19355, 19373 (Apr. 4, 2016).

exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization.'' This Memorandum noted that the government, similarly, ''may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status.'' It proceeded to observe that ''[t]he Constitution's protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government.'' The Attorney General's Memorandum further stated that a law must be both neutral and generally applicable in order to survive constitutional scrutiny: ''[a] law is not *neutral* if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits gratuitous restrictions Federal Law Protections for Religious Liberty on religious conduct; or accomplishes . . . a religious gerrymander, an impermissible attempt to target [certain individuals] and their religious practices''; whereas, ''[a] law is not *generally applicable* if in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief, including by fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does the prohibited conduct, or enables, expressly or de facto, a system of individualized exemptions.'' (emphases added; citations and internal quotation marks omitted.) Placing unique burdens on religion generally or a religion or religious entity specifically would suffice to invalidate that governmental action.

On May 3, 2018, President Trump signed E.O. 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending E.O. 13279 as amended by E.O. 13559, and other related Executive orders. Among other things, E.O. 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships'' to the ''White House Faith and Opportunity Initiative''; changed the way that the Initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Community Initiatives'' to change those names to ''Centers for Faith and Opportunity Initiatives''; and ordered departments and agencies without a Center for Faith and Opportunity Initiatives to designate a ''Liaison for Faith and Opportunity Initiatives.'' E.O. 13831 also eliminated the alternative provider requirement and alternative provider notice requirement that were imposed by E.O. 13559.

Alternative Provider and Alternative Provider Notice Requirement

E.O. 13831 deleted the requirement in E.O. 13559 that faith-based social services providers refer beneficiaries who object to receiving services from them to an alternative provider. Section 1(b) of E.O. 13559 amended section 2 of E.O. 13279, entitled ''Fundamental Principles,'' by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: ''If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.'' Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary ''receives written notice of the protections *set forth in this subsection* prior to enrolling in or receiving services from such program'' (emphasis added). The reference to ''this subsection'' rather than to ''this Section'' indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. The Department previously revised its regulations to conform to these provisions.[9]

The alternative provider provisions of E.O. 13559, which E.O. 13831 removed, were not required by the Constitution or any applicable law. Indeed, they are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations and with the Attorney General's Memorandum on Religious Liberty. See *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017). The alternative provider provisions of E.O. 13559 require the faith-based organization to provide referrals to secular organizations but do not require secular organizations to provide referrals to any faith-based organizations. These provisions constitute discrimination against an organization because of its religious status. It is precisely the kind of status-based discrimination that the Supreme Court recently has held the First Amendment's Free Exercise Clause to forbid. See *Trinity Lutheran,* 137 S. Ct. at 2019, 2021–22. The Federal government may no more be complicit in this discrimination part-way through its unfolding than it can initiate it. In addition, as the Supreme Court has reminded us, while ''[p]rivate biases may [sometimes] be outside the reach of the law, ... the law cannot, directly or indirectly, give them effect.'' *Palmore* v. *Sidoti,* 466 U.S. 429, 433 (1984). As a consequence, the governmental discrimination committed by the alternative provider provisions of E.O. 13559 is impermissible under *Trinity Lutheran's* construction of the Free Exercise Clause.

As the Supreme Court recently clarified in *Trinity Lutheran,* 137 S. Ct. at 2019: ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' '' [10] The Court in *Trinity Lutheran* added: ''[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.' '' [11] The Department's erstwhile requirements on faith-based organizations that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department to provide assurances or notices imposes a ''special disabilit[y]'' on such organizations ''solely on account of'' their ''religious status'' because similar requirements are not imposed on non-faith-based organizations.[12] The Supreme Court stated in *Zelman* that governmental aid and benefits must be '''made available to both religious and secular beneficiaries on a nondiscriminatory basis.' '' [13] Fifteen years later the *Trinity Lutheran* Court reaffirmed that the government ''cannot exclude individual Catholics,

[9] 34 CFR 75.712, 75.713, 76.712, 76.713.

[10] Quoting *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah,* 508 U.S. 520, 533 (1993).

[11] *Id.* at 2019 (quoting *McDaniel* v. *Paty,* 435 U.S. 618, 628 (1978) (plurality opinion) (citations omitted); *see also Mitchell* v. *Helms,* 530 U.S. 793, 827 (2000) (plurality opinion) (''The religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose.''); Attorney General's Memorandum on Religious Liberty, principle 6 (''Government may not target religious individuals or entities for special disabilities based on their religion.'').

[12] *Trinity Lutheran,* 137 S. Ct. at 2019 (citations and internal quotation marks omitted).

[13] 536 U.S. at 653–54 (quoting *Agostini* v. *Felton,* 521 U.S. 203, 231 (1997)).

Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it, from receiving [public] benefits.*'' [14] Here, no governmental ''interest of the highest order'' justifies the discrimination regarding requiring notices and assurances that discriminate against faith-based organizations.[15] To illustrate, under Supreme Court precedent, the governmental desire to '''achiev[e] greater separation of church and State than is already ensured under the Establishment Clause of the Federal Constitution' '' is not such an interest.[16] Therefore, the ineluctable inference is that the notice requirement imposed on faith-based organizations violates the Free Exercise Clause.

For these reasons and for the reasons earlier stated, applying the alternative provider requirement categorically to all faith-based providers and not to other providers of federally funded social services is in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under RFRA. Under RFRA, where the Government substantially burdens an entity's exercise of religion, the Government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb–1(b). When a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act,* 31 O.L.C. 162, 169–71, 174–83 (June 29, 2007). Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. *See Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 720–26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda. Revising the regulations to require both faith-based organizations and secular organizations to identify alternative providers is unnecessary, as both faith-based organizations and secular organizations are providing secular social services. In some cases, there may not be two secular organizations that offer the same services. In those circumstances, the secular organization should not lose the opportunity to become a grantee by failing to fulfill a condition of the grant imposed through a regulation, if no second organization—secular or religious—is available to serve as an alternative provider. Some secular organizations also may oppose religion altogether and may oppose informing beneficiaries of faith-based organizations as alternative providers. To the extent consistent with controlling Federal law, both faith-based organizations and secular organizations should have the freedom to interact with their beneficiaries in the manner that these organizations choose. Beneficiaries need not rely on providers for information about other secular or faith-based organizations that provide social services. Beneficiaries are consumers of public information and are capable of researching available providers and making informed decisions about whether to choose to receive social services from secular or faith-based organizations. While a situation hypothetically could arise where a beneficiary, due to a sincerely held religious belief, could not enter a particular religious facility to obtain social services, ED is not aware of such a situation occurring. In any event, a beneficiary confronted with such a choice between adhering to religious beliefs and receiving social services likely would have a right to relief under RFRA. Accordingly, the Department believes the best policy is to eliminate the burden regarding the identification of an alternative provider altogether instead of imposing a similar burden on secular providers, as all providers offer secular social services.

Other Notice Requirements

While E.O. 13559's requirement of notice to beneficiaries was limited to notice of alternative providers, parts 75 and 76, as most recently amended, went further than E.O. 13559 by requiring faith-based organizations that provide social services funded with direct Federal funds to give beneficiaries and potential beneficiaries a much broader notice. Parts 75 and 76 require faith-based organizations to provide a notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct Federal funds; and that beneficiaries or potential beneficiaries may report violations of these requirements. This extra notice requirement applies only to faith-based organizations and no others. In other words, a secular organization would not be required to provide the notice, whereas a faith-based organization would be—even if the secular and faith-based organizations were providing identical secular social services.

Separate and apart from these notice requirements, the Orders clearly set forth the underlying requirements of nondiscrimination, voluntariness, the holding of religious activities separate in time or place from any federally funded activity, and the right to file complaints of violations. Faith-based providers of social services, like other providers of social services, are required to sign assurances that they will follow the law and the requirements of grants and contracts they receive.[17] There is no basis on which to presume that they are less likely to follow the law than other social service providers. See *McDaniel* v. *Paty,* 435 U.S. 618, 629 (1978) (plurality opinion) (''The American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.'').[18] There is

[14] *Trinity Lutheran,* 137 S. Ct. at 2020 (quoting *Everson* v. *Bd. of Educ. of Ewing,* 330 U.S. 1, 16 (1947)) (emphasis added).

[15] *Trinity Lutheran,* 137 S. Ct. at 2019 (citations and internal quotation marks omitted).

[16] *Trinity Lutheran,* 137 S. Ct. at 2024 (quoting *Widmar* v. *Vincent,* 454 U.S. 263, 276 (1981)).

[17] *See, e.g.,* 28 CFR 38.7.

[18] *See Mitchell* v. *Helms,* 530 U.S. 793, 856–57 (2000) (O'Connor, J. concurring in judgment) (noting that in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular

thus no need for prophylactic protections that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

E.O. 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, ''the distinction between 'direct' and 'indirect' Federal financial assistance.'' [19] Following issuance of the Working Group's report, a final rule was issued to amend existing regulations to make that distinction, and to clarify that ''organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs,'' need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs.[20] In so doing, the final rule attempted to capture the definition of ''indirect'' aid that the Supreme Court employed in *Zelman.*[21]

In *Zelman,* the Court concluded that a government funding program is ''one of true private choice''—that is, an indirect-aid program—where there is ''no evidence that the State deliberately skewed incentives toward religious'' providers.[22] The Court upheld the challenged school-choice program because it conferred assistance ''directly to a broad class of individuals defined without reference to religion'' (*i.e.,* parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid ''on the basis of neutral, secular criteria that neither favor nor disfavor religion''; and it made aid available ''to both religious and secular beneficiaries on a nondiscriminatory basis.'' *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition of indirect aid hinge on the ''preponderance of religiously affiliated private'' providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, ''would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in'' others. [23] In short, the Court concluded that ''[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].'' [24]

The final rule issued after the Working Group's report included among its criteria for indirect Federal financial assistance a requirement that beneficiaries have ''at least one adequate secular option'' for use of the Federal financial assistance.[25] In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of ''indirect aid'' hinge on the geographically varying availability of secular providers. The Supreme Court's elucidation in *Zelman* and *Trinity Lutheran* and an impetus to recalibrate the concept of ''indirect'' aid'' prompted the Department's policy change. Thus, it is appropriate to amend existing regulations to bring the definition of ''indirect'' aid more closely into line with the Supreme Court's definition in *Zelman.*

Overview of Proposed Rule

The purpose of these proposed amendments is to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty. The Secretary proposes to amend part 3474 of title 2 of the Code of Federal Regulations and parts 75, 76, 106, 606, and 607 of title 34 of the Code of Federal Regulations. Title 2 CFR part 3474 pertains to Uniform Administrative Requirements, 34 CFR part 75 of EDGAR pertains to Direct Grant Programs, and 34 CFR part 76 of EDGAR pertains to State-Administered Formula Grant Programs. The regulations in 34 CFR part 106 address discrimination on the basis of sex in education programs or activities receiving Federal financial assistance, and the Secretary has authority to regulate with regard to discrimination on the basis of sex in such programs under 20 U.S.C. 1682. The regulations in 34 CFR part 606 pertain to the Developing Hispanic-Serving Institutions program, and the regulations are proposed under 20 U.S.C. 1101, *et seq.,* which grants the Secretary program authority to provide grants and related assistance to Hispanic-serving institutions to enable such institutions to improve and expand their capacity to serve Hispanic students and low-income individuals. The regulations in 34 CFR part 607 pertain to the Strengthening Institutions Program, and the regulations are proposed under 20 U.S.C. 1057, *et seq.,* which grants the Secretary authority to carry out a program to improve the academic quality, institutional management, and fiscal stability of eligible institutions to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the nation. The regulations in 34 CFR part 608 pertain to the Strengthening Historically Black Colleges and Universities Program, and the regulations are proposed under 20 U.S.C. 1060 through 1063c, which grants the Secretary authority to provide grants to such colleges and universities to improve and expand their capacity to serve Black students and low-income individuals. The regulations in 34 CFR part 609 pertain to the Strengthening Historically Black Graduate Institutions Program, and these regulations also are proposed under 20 U.S.C. 1060 through 1063c, which grants the Secretary authority to provide grants to such graduate institutions to improve and expand their capacity to serve Black students and low-income individuals. In addition to these authorities, the Secretary also has general authority under 20 U.S.C. 1221e–3 and 20 U.S.C. 3474 to promulgate regulations governing the Department's applicable programs and to manage the functions of the Department.

Consistent with these authorities, this proposed rule would amend parts 75 and 76 to conform to Executive Order 13279 and align with *Trinity Lutheran* and the Memorandum on Religious Liberty, by deleting the requirement that a faith-based social services provider must refer beneficiaries objecting to receiving services from them to an alternative provider.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the

educational purposes ''demonstrate[d] our willingness to presume that the university would abide by the secular content restriction.'').

[19] 75 FR 71319, 71321 (2010).

[20] 81 FR 19355, 19358 (2016).

[21] *See* 81 FR 19355, 19361–62 (2016).

[22] *Id.* at 650.

[23] *Id.* at 656–58.

[24] *Id.* at 658.

[25] *See* 81 FR 19355, 19407–19426 (2016).

guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and secular based organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive Federal funding. The language will clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise clauses of the Constitution.

The proposed rule would directly refer to the definition of ''religious exercise'' in RFRA and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman.*

The proposed rule would also amend 34 CFR 606.10 and 34 CFR 607.10 by removing language that prohibits use of funds for otherwise allowable activities, if they merely relate to ''religious worship'' and ''theological subjects,'' and replacing it with language that more narrowly defines the limitations. The proposed rule would add paragraph (c) to 34 CFR 106.12 and provide a non-exhaustive list of criteria that offers educational institutions different methods to demonstrate that they are eligible to claim an exemption to the application of Title IX, 20 U.S.C. 1681, and its implementing regulations to the extent Title IX and its implementing regulations would not be consistent with the institutions' religious tenets or practices.

Background—Part 2 (Free Inquiry)

On March 21, 2019, President Trump signed E.O. 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.[26] In response to this Executive order, as well as the First Amendment and the Secretary's general authority under 20 U.S.C. 1221e–3, the Secretary endeavors to ensure that all institutions of higher education, as defined in 20 U.S.C. 1002(a), that receive Federal research or education grants, as defined in E.O. 13864,[27] from the Department actually ''promote free inquiry.'' [28] These proposed regulations are also consistent with the sense of Congress expressed in various Federal statutes such as title IV of the Higher Education Act of 1965 (HEA) [29] and the Equal Access Act (EAA).[30] Because the act and the impact of institutional denial of free inquiry is deleterious at all institutions of higher education, the proposed regulations apply to all such institutions that receive Federal research and education grants. The Secretary, therefore, proposes regulations requiring public institutions to comply with the First Amendment to the U.S. Constitution as a material condition for receiving research and education grants; and requiring private institutions to comply with their own stated institutional policies regarding freedom of speech, including academic freedom, as a material condition for receiving research and education grants.[31] As previously stated, an institution of higher education means an institution of higher education as defined in 20 U.S.C. 1002(a). Under the proposed regulations, if there is a final, non-default judgment that an institution of higher education has violated those requirements, the Department will consider the grantee to be in violation of a material condition of the grant and may pursue available remedies for noncompliance, which include suspension or termination of a Federal award and potentially debarment.[32] Specifically, the Secretary proposes to amend parts 75 and 76 of title 34 of the Code of Federal Regulations. Part 75 of EDGAR pertains to Direct Grant Programs, and part 76 of EDGAR pertains to State-Administered Formula Grant Programs.

Both E.O. 13864 and the proposed regulations are intended to promote the First Amendment's guarantees of free expression and academic freedom, as the courts have construed them; to align with Federal statutes to protect free expression in schools; [33] and to protect free speech on campuses nationwide. Under the Supreme Court's First Amendment jurisprudence protecting the individual's right to his own ideas and beliefs, ''no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'' [34] As a result, officials at public institutions may not abridge their students' or employees' expressions, ideas, or thoughts.[35] In a landmark opinion, *Tinker* v. *Des Moines Ind. Comm. Sch. Dist.* (1969), the Supreme Court stated more than half a century ago that ''[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'' [36]

In a significant opinion, *Keyishian* v. *Bd. of Regents of the Univ. of the State of N.Y.* (1967), the Supreme Court observed, ''Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.'' [37] Consequently, the First Amendment right of free expression means that public officials may not discriminate against students or employees based on their viewpoints.[38] Under Supreme Court precedent, these principles dictate that public institutions violate the First Amendment if they charge groups excessive security costs ''simply because [these groups and their speakers] might offend a hostile mob.'' [39]

With respect to private institutions, academic freedom is another aspect of freedom of speech. ''Freedom of speech secures freedom of thought and

[26] 84 FR 11,402.

[27] E.O. 13864, § 3(c) defines ''federal research or education grants'' as ''all funding provided by a covered agency directly to an institution but do not include funding associated with Federal student aid programs that cover tuition, fees, or stipends.''

[28] *Id.* (§ 3(a))

[30] 20 U.S.C. 4071.

[31] The manner in which the Department of Education implements E.O. 13864 does not bind or affect how other Federal agencies implement this Executive Order.

[32] 34 CFR 75.901 (cross-referencing 2 CFR 200.338); 2 CFR 180.800.

[33] 20 U.S.C. 1011a; 20 U.S.C. 4071.

[34] *W. Va. State Bd. of Educ.* v. *Barnette,* 319 U.S. 624, 642 (1943).

[35] *Tinker* v. *Des Moines Ind. Comm. Sch. Dist.,* 393 U.S. 503, 505–07 (1969).

[36] *Id.* at 506.

[37] 385 U.S. 589, 603.

[38] *See, e.g., Rosenberger* v. *Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 829–30 (1995).

[39] *Forsyth Cty., Ga.* v. *Nationalist Mov't,* 505 U.S. 123, 134–35 (1992); *see also College Republicans of the Univ. of Wash.* v. *Cauce,* No. C18–189–MJP, 2018 WL 804497 (W.D. Wash. Feb. 9, 2018) (holding University of Washington Security Fee Policy violates the students' First Amendment rights to freedom of speech and expression).

belief.'' [40] Academic freedom is an indispensable aspect of the ''freedom of thought and belief'' to which individuals across educational institutions, including private ones, are entitled.[41] It follows that academic freedom is intertwined with, and is a predicate to, freedom of speech itself; and injury to one is tantamount to injury to both. Academic freedom's noble premise is that the vigilant protection of free speech unshackled from the demands and constraints of censorship will help generate new thoughts, ideas and knowledge and even questions and doubts about hitherto undisputed ideas. While academic freedom's high utilitarian value derives itself from the fact that its ''results . . . are to the general benefit in the long run,'' academic freedom is also inherently important because its flourishing inherently is worth defending in a free society.[42]

Academic freedom, just like freedom of speech itself, is predicated on the principle that thoughts, arguments and ideas should be expressed by individuals and assessed by listeners on their own merit, rather than the censor's coercion. Academic freedom insists on the freedom of and on the power of speech so that the speaker has a fair opportunity to convince the listener of an idea and the listener a fair opportunity to thus be persuaded. This insistence on evaluating ideas on the merit of their strength is the highest tribute we pay one another. This preservation of academic freedom is also a ''lesson'' we endeavor ''to carry . . . onward as we seek to preserve and teach the necessity of freedom of speech for the generations to come,'' especially at educational institutions.[43] This homage is the reason that the cultural ethos of academic freedom has set the United States apart as a beacon of freedom in the community of nations for centuries, against the austere challenge we have always faced and may continue to face from ''relentless authoritarian regimes . . . in their attempts to stifle free speech.'' [44]

The confluence of free speech and academic freedom is nothing new as far as the United States' educational institutions are concerned. As Yale University, a private American institution of higher learning, acknowledged almost half a century ago: Because ''[t]he primary function of a university is to discover and disseminate knowledge by means of research and teaching,'' ''the university must do everything possible to ensure within it the fullest degree of *intellectual freedom.*'' [45] Yale further deduced that ''[t]he history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable.'' [46] When free speech is suppressed, academic freedom is the casualty many times over, ''for whoever deprives another of the right to state unpopular views necessarily also deprives others of the right to listen to those views.'' [47] Neither harm is tolerable, and the proposed regulations endeavor to protect academic freedom, as a part of free speech, across recipient institutions.

E.O. 13864 and the proposed regulations are also aligned with Federal statutes to protect free inquiry. Illustratively, Congress has expressed that ''no student attending an institution of higher education . . . should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under [numerous] education program[s], activit[ies], or division[s] of the institution[s] directly or indirectly receiving financial assistance.'' [48] Congress has also articulated that ''an institution of higher education should facilitate the free and open exchange of ideas'', and ''students should not be intimidated, harassed, discouraged from speaking out, or discriminated against'' on account of their speech, ideas or expression.[49] For public secondary schools receiving Federal financial assistance, Congress has made it ''unlawful for any [such institution,] . . . which has a limited open forum[,] to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.'' [50] Since 1871, Congress has made actionable violations of the First Amendment by those acting in an official government capacity, whether on campuses or elsewhere.[51] Congress, thus, disapproves of the suppression of or discrimination against ideas in the academic setting.

Courts repeatedly have been called upon to vindicate the rights of dissident campus speakers, who do not necessarily share the views of the majority of campus faculty, administrators, or students. Otherwise, the censorship and suppression of the speech of faculty, other employees, and students would go unredressed. For instance, when a public university, the University of North Carolina Wilmington, denied a promotion to a professor because he had authored newspaper columns about academic freedom, civil rights, campus culture, sex, feminism, abortion, homosexuality, and religion, he sued the university and won.[52] The United States Court of Appeals for the Fourth Circuit concluded that the professor's ''speech was clearly that of a citizen speaking on a matter of public concern'' and, thus, was entitled to constitutional protection.[53] Furthermore, the United States District Court for the Southern District of California recently held that California State University San Marcos had violated the First Amendment by committing viewpoint discrimination against the pro-life student organization, Students for Life, when allocating grants from the university's mandatory student fee.[54]

Even cases that have settled demonstrate there is a pervasive problem of the denial of free speech rights across American college campuses. For instance, the Yosemite Community College District and its administrators settled a First Amendment lawsuit filed by a student whom a constituent college of that District had stopped from handing out copies of the United States Constitution on Constitution Day in a public part of

[40] *Nat'l Inst. of Family and Life Advocates* v. *Becerra,* 138 S.Ct. 2361, 2379 (2018) (*NIFLA*) (Kennedy, J., concurring).

[41] *Id.*

[42] Chairman's Letter to the Fellows of the Yale Corporation, Report of the Committee on Freedom of Expression at Yale, Yale University (Dec. 23, 1974) (Yale Report on Freedom of Expression).

[43] *NIFLA,* 138 S.Ct. at 2379 (Kennedy, J., concurring).

[44] *Id.*

[45] Yale Report on Freedom of Expression, *supra* (emphasis added).

[46] *Id.*

[47] *Id.*

[48] 20 U.S.C. 1011a. In the same section, Congress has defined ''protected speech'' as ''speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments''; and has defined ''protected association'' as ''the joining, assembling, and residing with others that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.'' 20 U.S.C. 1011a(c)(2)–(3).

[49] 20 U.S.C. 1011a(2)(C)–(D).

[50] 20 U.S.C. 4071(a).

[51] 42 U.S.C. 1983.

[52] *See Adams* v. *Tr. of the Univ. of N.C.-Wilmington,* 640 F.3d 550 (4th Cir. 2011).

[53] *Id.* at 565.

[54] *See Apodaca, et al.* v. *White, et al.,* 2019 WL 3803698 (S.D. Cal. August 13, 2019).

campus.[55] And the University of California at Berkeley settled a high-profile lawsuit in December 2018 when it became clear that the university selectively had deployed its vague policies to prevent conservative groups from bringing to campus speakers harboring ideas the university administration just did not like.[56]

To be certain, the Secretary will honor the institutional mission of private institutions, including their religious mission. To this end, the proposed regulations do not require a private institution to ensure freedom of speech (unless it chooses to do so through its own stated institutional policies). It follows that religiously affiliated institutions, in freely exercising their faith, define their free speech policies as they choose in a manner consistent with their mission. Assuredly, the proposed regulations do not mandate that religiously affiliated institutions adopt such policies in order to participate in the Department's grants and programs. In other words, the proposed regulations do not impose a requirement to adopt a campus free speech policy akin to the First Amendment if doing so would force the school to compromise its Free Exercise Clause guarantee.

Viewed in this light, well-established case law provides that private institutions, although not bound by the First Amendment because they are not state actors,[57] must comply with their stated institutional policies regarding freedom of speech and must deliver on any promised protections through which they attracted at least some students and employees.[58] Breaching their stated institutional policies can subject a private institution to various private causes of action sounding in both contract and tort, such as breach of contract, negligence, fraud and misrepresentation.[59] As a result, private institutions that mislead prospective students and employees about free expression on their campuses can be held liable in the same way they can be held liable for misrepresenting their academic, cultural, or athletic offerings.[60]

The suppression of free inquiry is a concrete, real harm on campuses today, just as viewpoint discrimination has become an ''increasingly prevalent'' ''poison'' to society generally.[61] Some academic administrators may believe they are doing what's right, that quieting unsavory opinions will lead to a more calm, productive learning environment. But this misperception is one that has allowed hecklers to veto protected First Amendment speech. Instead, under the American democratic system, more speech is the appropriate means to combat ideas and philosophies with which we disagree. And the hecklers and disrupters, to the extent they are violent, are the ones that should be restrained.[62] But more speech and expression is the appropriate means to combat ideas and philosophies with which we disagree. That is the essence of ''preserv[ing]'' debate and discourse across the ''uninhibited marketplace of ideas in which truth will ultimately prevail.'' [63] By materially conditioning Federal research and education grants on institutional respect for free inquiry, the Department's proposed regulations would help preserve the freedoms, as promised under the First Amendment and in institutional policies, that we cherish and that are essential to education.

When suppressing speech, academic administrators set a detrimental example denigrating free inquiry across the societal spectrum and signaling others to do so. As Justice Brandeis perceptively reminded us almost a century ago, were the authorities to become ''lawbreaker[s],'' they would ''breed[ ] contempt for law;'' they would ''invite[ ] every man to become

[55] *See Van Tuinen* v. *Yosemite Cmty. Coll. Dist. et al.,* Case No. 1:13-at-00729 (E.D. Cal. 2013) (Complaint); *Victory: Modesto Junior College Settles Student's First Amendment Lawsuit,* Foundation for Individual Rights in Education (FIRE), *available at www.thefire.org/victory-modesto-junior-college-settles-students-first-amendment-lawsuit/.*

[56] *See Young America's Found. & Berkeley Coll. Republicans* v. *Napolitano, et al.,* Case No. 3:17-cv-02255 (N.D. Cal. 2017) (Amended Complaint); *see also id.* (Doc. No. 44) (Statement of Interest by the United States Department of Justice, stating that the University of California at Berkeley policies violated the First Amendment); Jonathan Stempel, *UC Berkeley settles lawsuit over treatment of conservative speakers,* Reuters, Dec. 3, 2018, *available at www.reuters.com/article/us-california-lawsuit-ucberkeley/uc-berkeley-settles-lawsuit-over-treatment-of-conservative-speakers-idUSKBN1O22K4.*

[57] *See Manhattan Cmty. Access Corp.* v. *Halleck,* 139 S.Ct. 1921, 1928 (2019) (''[T]he Free Speech Clause prohibits only governmental abridgment of speech. The Free Speech Clause does not prohibit private abridgment of speech.'') (citing *Denver Area Ed. Telecomm. Consortium, Inc.* v. *FCC,* 518 U.S. 727, 737 (1996) (plurality opinion); *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.,* 515 U.S. 557, 566 (1995); *Hudgens* v. *NLRB,* 424 U.S. 507, 513 (1976)).

[58] *See, e.g., Dixon* v. *Ala. State Bd. of Educ.,* 294 F.2d 150, 157 (5th Cir. 1961), *cert. denied,* 368 U.S. 930 (1961); *Kashmiri* v. *Regents of Univ. of Calif.* (2007) 156 Cal. App. 4th 809, 824; *Zumbrun* v. *Univ. of S. Calif.* (1972) 25 Cal.App.3d 1, 10–11; *Searle* v. *Regents of Univ. of Calif.* (1972) 23 Cal.App.3d 448, 452;; *Univ. of Miami* v. *Militana,* 184 So.2d 701, 703–04 (Fla.App. 1966); *Anthony* v. *Syracuse Univ.* (1928) 224 App.Div. 487, 489–490 [231 N.Y.S. 435, 438–439]; *John B. Stetson Univ.* v. *Hunt,* 88 Fla. 510, 517 (1925); *Barker* v. *Tr. of Bryn Mawr Coll.,* 278 Pa. 121, 122 (1923); *Goldstein* v. *New York Univ.* (1902) 76 App.Div. 80, 82–83 [78 N.Y.S. 739, 740]; *People ex rel. Cecil* v. *Bellevue Hosp. Med. Coll.* (1891) 60 Hun 107 [14 N.Y.S. 490], *aff'd,* 128 N.Y. 621 [28 NE 253].

1 *See Kashmiri,* 156 Cal. App. 4th at 824 (quoting *Andersen* v. *Regents of Univ. of Calif.* (1972) 22 Cal.App.3d 763, 769).

[59] *See, e.g., Kashmiri,* 156 Cal. App. 4th at 824; J. Douglas Drushal, *Comment: Consumer Protection and Higher Education—Student Suits Against Schools,* 37 Oh. State L. J. 608, 611–22 (1976).

[60] *See, e.g., Greene,* 271 F.Supp. at 613 (recognizing that assurances given in university catalog are ''part of the contract'' the student may invoke); *Dixon,* 294 F.2d at 157; *Kashmiri,* 156 Cal. App. 4th at 824 (recognizing that ''the basic legal relationship between a student and a private university is contractual in nature''); *Zumbrun,* 25 Cal.App.3d at 10–11 (''The basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract.''); *Searle,* 23 Cal.App.3d at 452 (recognizing ''that students have certain contractual rights'' in relation to the university); *Militana,* 184 So.2d at 703–04 (stating that ''the terms and conditions . . . offered by the publications of the college . . . have some of the characteristics of a contract between the parties, and are sometimes subject to civil remedies in courts of law''); *Anthony,* 224 App.Div. at 489–90 (''Under ordinary circumstances and conditions a person matriculating at a university establishes a contractual relationship . . .''); *John B. Stetson Univ.,* 88 Fla. at 517 (''The relation between a student and an institution of learning privately conducted . . . is solely contractual in character . . .''); *Barker,* 278 Pa. at 122 (same); *Goldstein,* 76 App.Div. at 82–83 (stating that assurances given in a university circular become part of the contract the student may invoke); *Bellevue Hosp. Med. Coll.,* 60 Hun at 107 (same).

[61] *Iancu* v. *Brunetti,* 139 S. Ct. 2294, 2302 (2019) (Alito, J., concurring) (''Viewpoint discrimination is poison to a free society. But in many countries with constitutions or legal traditions that claim to protect freedom of speech, serious viewpoint discrimination is now tolerated, and such discrimination has become increasingly prevalent in this country.''); *see also* Cliff Maloney, Jr., *Colleges Have No Right to Limit Students' Free Speech,* Time, Oct. 13, 2016, *https://time.com/4530197/college-free-speech-zone/* (Maloney, *No Right*) (''University campuses are now home to a plethora of speech restrictions. From sidewalk-sized 'free-speech zones' to the criminalization of microaggressions, America's college campuses look and feel a lot more like an authoritarian dictatorship than they do the academic hubs of the modern free world. When rolling an inflated free-speech ball around campus, students at the University of Delaware were halted by campus police for their activities. A Young Americans for Liberty leader at Fairmont State University in West Virginia was confronted by security when he was attempting to speak with other students about the ideas he believes in. A man at Clemson University was barred from praying on campus because he was outside of the free-speech zone. And a student at Blinn College in Texas abolished her campus' free-speech zone in a lawsuit after administrators demanded she seek special permission to advocate for self-defense.'').

[62] *See, e.g.,* Hayden Williams, *I was assaulted at Berkeley because I'm conservative. Free speech is under attack,* USA Today, Mar. 6, 2019, *available at www.usatoday.com/story/opinion/voices/2019/03/06/berkeley-conservative-students-campus-college-bias-punch-column/3065895002/;* Elizabeth Llorente, *Felony charges filed against alleged attacker of conservative activist at UC-Berkeley,* Fox News, Mar. 5, 2019, *available at www.foxnews.com/us/felony-charges-filed-against-alleged-attacker-of-conservative-activist-at-uc-berkeley.*

[63] *NIFLA,* 138 S.Ct. at 2374 (citations and internal quotation marks omitted).

a law unto himself;'' they would ''invite[ ] anarchy'' and, as a corollary, violence.[64] Suppressed thought and expression are the casualties of the expression-suppressing environment currently prevailing, as evinced, in many institutions.[65] To this end, institutions may not invoke academic freedom selectively and conveniently.[66] Thought suppression on campus is inconsistent with the time-honored principle that freedom of expression, including academic freedom, exists not just for the institutions but also for the students and employees who are part of the educational community.[67] Indeed, the Supreme Court has reminded us that ''[t]he vigilant protection of [such] freedoms is nowhere more vital than in the community of American schools,'' in order to secure the free-expression rights of '' '*all* persons, no matter what their calling.' ''[68]

Both E.O. 13864 and the Secretary's proposed regulations are carefully designed to preserve free-inquiry protections. The Secretary has general authority under 20 U.S.C. 1221e–3 and 20 U.S.C. 3474 to promulgate regulations governing the Department's applicable programs and to manage the functions of the Department. The proposed amendments would: (1) Require public institutions that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department to comply with the First Amendment to the U.S. Constitution, as a material condition of the grant; (2) require private institutions that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department to comply with stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the grant; and (3) require public institutions that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department not to deny to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution, as a material condition of the grant.

Summary of Proposed Changes—Part 1 (Religious Liberty)

The proposed regulations would—

- Amend 2 CFR 3474.15 by removing procurement and contracting requirements that apply only to faith-based entities; refer to ''religious exercise'' rather than ''religious character''; require the Department to add notices detailing protections for religious exercise to all its notices or announcements of awards and funding opportunities; prohibit the Department from establishing requirements that apply only to faith-based organizations; clarify that a faith-based organization that contracts with a grantee or subgrantee does not forfeit its independence, autonomy, right of expression, religious character, or authority over its governance nor does it lose the protections outlined in the Attorney General's Memorandum on Religious Liberty; clarify that faith-based organizations that contract with a grantee or subgrantee maintain the right to select board members and employees; and clarify that none of the protections in the proposed regulations are meant to advantage one religion over another.
- Add § 3474.21, which would provide that the provisions of these subparts are severable.
- Amend 34 CFR 75.51, by adding language that would not require application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. If an entity has a sincerely-held religious belief that it cannot apply for status as a 501(c)(3) tax-exempt entity, it may provide evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under the Department's criteria in 34 CFR 75.51(b)(1) through (b)(4).
- Amend 34 CFR 75.52 and 76.52 by removing language that presumes faith-based entities are less likely than other social service providers to follow the law; adding requirements that the Department include language that clarifies religious freedom protections in all its notices and announcements of awards and that is substantially similar to that in proposed Appendices A and B, as revised; adding language that ensures no extra burden will be placed on faith-based organizations that is not also placed on secular organizations; adding language that does not disqualify an otherwise eligible entity from participating in a Department program merely because the entity is faith-based; clarifying the definitions of ''direct'' and ''indirect Federal financial assistance,'' ''pass-through entity,'' and ''religious exercise''; clarifying that a faith-based organization that contracts with a grantee or subgrantee does not forfeit its independence, autonomy, right of expression, religious character, and authority over its governance nor does it lose protections outlined in the Attorney General's Memorandum on Religious Liberty; clarifying that faith-based organizations that contract with a grantee or subgrantee maintain the right to select their board members and employees; and clarifying that none of the specified protections are meant to advantage one religion over another.
- Add §§ 75.63 and 76.53, which would provide that the provisions of these subparts are severable.
- Eliminate written notice and referral requirements in §§ 75.712, 75.713, 76.712, and 76.713, which require that faith-based providers, but not other providers, give notice of the right to an alternative provider.
- Amend §§ 75.714 and 76.714 to conform with the elimination of §§ 75.712, 75.713, 76.712, and 76.713 and remove references thereto; add language requiring compliance with Appendices A and B of parts 75 and 76; and change ''intermediary'' to ''pass-through entity.''
- Revise Appendix A and add Appendix B to parts 75 and 76. Appendices A and B detail religious freedom protections and prohibit discrimination against faith-based organizations in the Department's grant and subgrant programs.
- Add §§ 75.741 and 76.741, which would provide that the provisions of these subparts are severable.
- Add § 106.12(c) to provide a non-exhaustive list of criteria that offers educational institutions different methods to demonstrate that they are eligible to claim an exemption to the application of Title IX, 20 U.S.C. 1681, and its implementing regulations to the extent Title IX and its implementing regulations would not be consistent

[64] *Olmstead* v. *U.S.,* 277 U.S. 438, 468 (1928) (Brandeis, J., dissenting), *overruled by Katz* v. *U.S.,* 389 U.S. 347 (1967).

[65] *See, e.g., Iancu,* 139 S. Ct. at 2302; Maloney, *No Right, supra.*

[66] Notably, if institutions invoke academic freedom to preserve their right to shape their own campus demographics, along with pursuing other administrative pursuits, they surely must permit their students, faculty, and staff to invoke its protections too. These institutions may not claim academic freedom for themselves while refusing to let their students, faculty, and staff do the same. *See, e.g.,* Brief for Respondents 25, *Fisher* v. *Univ. of Tex. at Austin,* 136 S.Ct. 2198 (2016) (*Fisher II*) (contending that ''a university is entitled to make an *academic judgment* . . . that the pursuit of [racial] diversity is integral to its [educational] mission.'') (emphasis added; and citations and internal quotation marks omitted); Brief for the Patterson Respondents 16, 37–38, *Gratz* v. *Bollinger,* 539 U.S. 244 (2003) (defending racial preferences in admissions as ''consistent with the *academic freedoms* accorded to universities to determine their own selection processes, which is recognized as a special concern to the First Amendment.'') (emphasis added).

[67] *See generally Tinker* v. *Des Moines Ind. Comm. Sch. Dist.,* 393 U.S. 503 (1969) (vindicating free-speech rights of students under First Amendment); *Pickering* v. *Bd. of Educ.,* 391 U.S. 563 (1968) (same for teachers).

[68] *Shelton* v. *Tucker,* 364 U.S. 479, 487 (1960) (quoting *Wieman* v. *Updegraff,* 344 U.S. 183, 195 (1952) (Frankfurter, J., concurring)) (emphasis added).

with the institutions' religious tenets or practices.

• Amend §§ 606.10, 607.10, 608.10, and 609.10 by removing language that prohibits use of funds for otherwise allowable activities if they merely relate to ''religious worship'' and ''theological subjects'' and replace it with language that more narrowly defines the limitations.

• Add §§ 606.11, 607.11, 608.12, and 609.12, which would provide that the provisions of these subparts are severable.

Summary of Proposed Changes—Part 2 (Free Inquiry)

The proposed regulations would—

• Amend §§ 75.500 and 76.500 by adding language that would require grantees that are public institutions to comply with the First Amendment to the U.S. Constitution, require grantees that are private institutions to comply with stated institutional policies regarding freedom of speech, including academic freedom; and require grantees that are public institutions to treat religious student organizations the same as secular student organizations.

• Add §§ 75.684 and 76.684, which would provide that the provisions of these subparts are severable.

• Amend §§ 75.700 and 76.700 to conform with the changes made in §§ 75.500 and 76.500.

• Add §§ 75.741 and 76.784, which would provide that the provisions of these subparts are severable.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Significant Proposed Regulations—Part 1 (Religious Liberty)

2 CFR 3474.15 Contracting With Faith-Based Organizations and Nondiscrimination

Current Regulations: Paragraph (a) of 2 CFR 3474.15 establishes responsibilities that grantees and subgrantees have in selecting contractors to provide direct Federal services under a program of the Department and impose burdens on faith-based organizations but not secular organizations, such as the burden of identifying an alternative provider. Paragraph (b) of 2 CFR 3474.15 states that a faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization. Paragraph (c) of 2 CFR 3474.15 describes additional burdens such as referral requirements and written notice requirements imposed on faith-based organizations that receive direct Federal financial assistance but not secular organizations that receive this same Federal financial assistance. Paragraph (d) of 2 CFR 3474.15 requires a private organization that engages in explicitly religious activities, such as religious worship, instruction, or proselytization, to offer those activities separately in time or location from any programs or services supported by a contract with a grantee or subgrantee. Paragraph (e) of 2 CFR 3474.15 confirms that a faith-based organization that contracts with a grantee or subgrantee, including a State, may retain its independence, autonomy, right of expression, religious character, and authority over its governance. Paragraph (f) prohibits a private organization that receives a grant or subgrant under a program of the Department from discriminating against beneficiaries or prospective beneficiaries on the basis of religion. Paragraph (g) addresses a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion.

Proposed Regulations: The proposed revisions to paragraph (a) eliminate the additional burdens imposed on faith-based organizations but not secular organizations and also clarify that grantees and subgrantees must ensure compliance by their subgrantees with the provisions of 2 CFR 3474.15 and any implementing regulations or guidance. The revisions proposed to paragraph (b)(1) of these regulations clarify that faith-based organizations are eligible to participate in the Department's grant programs on the same basis as any other private organization considering any permissible accommodation consistent with Federal law. The proposed revisions to paragraph (b)(2) provide that a notice or announcement of award opportunities and a notice of award or contract should contain language substantially similar to proposed Appendix A and Appendix B, respectively. The proposed regulations add paragraph (b)(3), which provides that no grant document, agreement, covenant, memorandum of understanding, policy, or regulation shall require faith-based organizations to provide assurance or notices where they are not required of non-faith-based organizations. Proposed paragraph (b)(3) also provides that all organizations, including faith-based organizations, must adhere to all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities. Proposed paragraph (b)(4) similarly provides that the Department cannot use any grant document, agreement, etc., to disqualify faith-based organizations from applying for or receiving grants because the organization is motivated or influenced by religious faith to provide social services.

With respect to paragraph (c)(1), the proposed regulations keep the requirement that faith-based organizations not use the grant for religious worship, religious instruction, and proselytization and remove other burdens imposed on faith-based organizations but not secular organizations such as referral requirements. There are no revisions to paragraph (c)(2).

There are only minor, stylistic revisions but no substantive revisions to paragraph (d)(1), which requires a private organization that receives direct Federal financial aid and engages in explicitly religious activities to engage in those activities at a separate time or location from any programs or services funded by a grant from the Department. There are no revisions to paragraph (d)(2).

We add a sentence to paragraph (e)(1) to provide that a faith-based organization retains the protections of law described in the Attorney General's Memorandum on Religious Liberty. We also clarify in paragraph (e)(2) that a faith-based organization that applies for or receives a grant under a program of the Department is not required to conceal religious art, icons, scriptures, etc., from its facilities and may select its board members and employees on the basis of their acceptance of or adherence to the religious tenets of the organization.

We clarify in paragraph (f) that a faith-based organization that receives indirect Federal financial assistance is not required to modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

We propose adding a sentence at the end of paragraph (g) to clarify that an organization qualifying for an exemption from the Federal prohibition on employment discrimination on the basis of religion may select its employees on the basis of their acceptance or adherence to the religious tenets of the organization.

Finally, we propose adding paragraph (h) to provide that the Department will not advantage or disadvantage one

religion over another and will not advantage or disadvantage one religion in favor of a secular organization.

Reasons: In *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* the Supreme Court held that laws and policies may provide benefits in a way that is neutral and generally applicable without regard to religion, but policies that single out the religious for disfavored treatment violate the Free Exercise Clause.[69] The revisions to § 3474.15 remove references to regulations that impose additional burdens on faith-based organizations but not on secular organizations, such as the alternative provider requirement and related notice. These revisions codify well-settled First Amendment jurisprudence that establishes that faith-based organizations should neither suffer a disadvantage nor gain an advantage due to their religious character.

These proposed regulations also seek to address and prevent any confusion about the ability of faith-based organizations to qualify for Department grants. Consistent with the First Amendment and RFRA, these revisions provide that a faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts for which such other organizations are eligible and considering any permissible accommodation. The revisions to § 3473.15 further clarify that faith-based organizations do not lose the protection of the laws described in the Attorney General's Memorandum on Religious Liberty by accepting Federal financial assistance. For example, these faith-based organizations may continue to select board members and hire employees based on their adherence to the religious tenets of the organization.

The Secretary also proposes changes to § 3474.15 for the reasons stated in ''Background—Part 1 (Religious Liberty)'' and for the following reasons:

Section 3474.15(a) is proposed to be changed in order to provide clarity.

The Secretary proposes to clarify the text in § 3474.15(b)(1) by eliminating extraneous language and to align it more closely with RFRA. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

[69] 137 S. Ct. at 2021–25.

The Secretary proposes to clarify the text in § 3474.15(b)(2) and to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman; Trinity Lutheran;* principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR20715 (May 8, 2018).

The Secretary proposes to clarify the text in § 3474.15(b)(3) and align it more closely with the First Amendment, RFRA, and other Federal agency regulations. *See, e.g., Trinity Lutheran;* principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(d).

The Secretary proposes to clarify the text in § 3474.15(b)(4) and to align it more closely with the First Amendment, RFRA, and salient Federal agency regulations. *See, e.g., Trinity Lutheran;* principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(d).

The Secretary proposes to change § 3474.15(c)(1) in accordance with section 2(b) of E.O. 13831, 83 FR 20715 (May 3, 2018).

In § 3474.15(d)(1), the Secretary proposes to clarify the text by eliminating extraneous language and to align it more closely with E.O. 13559, 75 FR 71319 (November 17, 2010), and E.O. 13279, 67 FR 77141 (December 12, 2002).

In § 3474.15(e)(1) we propose to clarify the text by eliminating extraneous language and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 3474.15(e)(2) we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 3474.15(f) we propose to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman;* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 3474.15(g) we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 3474.15(h) we propose to align the text more closely with the First Amendment. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

2 CFR 3474.21 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 3474.21 would make clear that, if any part of the proposed regulations for part 3474, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

34 CFR 75.51 How To Prove Nonprofit Status

Current Regulations: The current regulations specify how an entity participating in Department programs may prove its nonprofit status. Under 34 CFR 75.51(b)(1) through (b)(4), an applicant may demonstrate its nonprofit status by proving that the Internal Revenue Service has provided such a designation, that a State has provided such a designation under certain circumstances, that the applicant organization's certificate of

incorporation demonstrates it is a nonprofit organization, or that the applicant's parent organization has received such designation and considers the applicant to be a local affiliate.

Proposed Regulations: The proposed regulations clarify that if the applicant would qualify under the existing methods of demonstrating nonprofit status but cannot register with a government agency such as the Internal Revenue Service because of a sincerely-held religious belief, the entity may still qualify as a nonprofit organization as long as the entity otherwise qualifies as a nonprofit organization under § 75.51(b)(1) through (b)(4).

Reasons: The Department's current regulations do not require registration with the Internal Revenue Service as the only method for an applicant to show that it is a nonprofit organization. Consistent with the current regulations, the proposed revisions clarify that an entity that has a sincerely-held religious belief that it cannot apply for a determination that they are tax-exempt under section 501(c)(3) of the Internal Revenue Code may still qualify as a nonprofit organization, much like any other organization, by demonstrating that it would otherwise qualify as a nonprofit organization under 34 CFR 75.51(b)(1) through (b)(4).

For the reasons stated in ''Background—Part 1 (Religious Liberty)'' and in accordance with RFRA, the Department wishes to ensure accommodations for proving nonprofit status are provided if an organization has a sincerely-held religious belief that would prevent it from registering with a State or the Federal government. This principle draws its support from Supreme Court precedent and is consistent with principles 12 and 13 of the Attorney General's Memorandum on Religious Liberty. Namely, Principle 12 of the Attorney General's Memorandum states that ''RFRA does not permit the federal government to second-guess the reasonableness of a religious belief''; and Principle 13 states that ''[a] governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.''

Several times, both before and after RFRA's enactment, the Supreme Court has instructed that, as far as the sincerity of the asserted religious belief is concerned, neither the courts nor the government may second-guess the ''line'' the person concerned has drawn between the activities or obligations consistent with his religious beliefs and those inconsistent with his religious beliefs.[70] Quite simply, '''it is not for [the courts or the government] to say that the line he [has] [drawn] [i]s an unreasonable one,' '' [71] let alone venture an opinion on whether these ''religious beliefs are mistaken or insubstantial.'' [72] Instead, the only thing the courts and the government may ask is whether this demarcation springs from the person's ''honest conviction.'' [73] To accommodate organizations that establish such an honest conviction that prevents them from registering as a non-profit, the Department would consider whether such an organization would otherwise qualify as a nonprofit organization under § 75.51(b)(1) through (b)(4). The Department believes that an organization should be able to submit evidence from which it would be readily apparent whether an organization would satisfy those criteria.

§§ 75.52 and 76.52 Eligibility of Faith-Based Organizations for a Grant and Nondiscrimination Against Those Organizations

Current Regulations: The current regulations, §§ 75.52 and 76.52, contain parallel provisions for Direct Grant programs and State-Administered Formula Grant programs, respectively. Current paragraph (a) of these provisions makes clear that faith-based organizations are eligible to participate in the Department's grant programs on the same basis as any other private organization. Current paragraph (b) provides that a faith-based organization that receives a grant under a program of the Department is subject to the provisions in §§ 75.532 and 76.532, as applicable. These sections prohibit use of Federal funds for religious purposes. Under current §§ 75.52(c) and 76.52(c), an organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from services under a program of the Department and participation in those activities must be voluntary. Paragraph (c) also defines direct Federal financial assistance and indirect Federal financial assistance as well as other terms. Under current paragraph (d), a faith-based organization that applies for or receives a grant may retain its religious identity. Current paragraph (e) prohibits a private organization that receives a grant or subgrant under a Department program from discriminating against beneficiaries or prospective beneficiaries on the basis of religion. Current paragraph (f) addresses a grantee's or subgrantee's contribution of its funds in excess of what is required and current paragraph (g) addresses a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion.

Proposed Regulations: The revisions proposed to paragraph (a) of these regulations clarify that faith-based organizations are eligible to participate in the Department's grant programs on the same basis as any other private organization. The proposed revisions to paragraph (a)(2) provide that a notice or announcement of award opportunities and a notice of award or contract should contain language substantially similar to proposed Appendix A and Appendix B, respectively. The proposed regulations add paragraph (a)(3), which provides that no grant document, agreement, covenant, memorandum of understanding, policy, or regulation shall require faith-based organizations to provide assurance or notices where they are not required of non-faith-based organizations. Proposed paragraph (a)(3) also provides that all organizations, including faith-based organizations, must adhere to all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. Proposed paragraph (a)(4) similarly provides that the Department cannot use any grant document, agreement, etc., to disqualify faith-based organizations from applying for or receiving grants because the organization is motivated or influenced to provide social services by religious faith.

There are no proposed revisions to paragraph (b), which requires faith-based organizations not to use the grant for religious worship, religious instruction, and proselytization.

There are only minor, stylistic revisions but no substantive revisions to paragraphs (c)(1) and (2), which require a private organization that receives direct Federal financial and engages in explicitly religious activities to engage in those activities at a separate time or location from any programs or services funded by a grant from the Department.

We propose revising the existing definitions in paragraph (c)(3), adding definitions of terms such as ''religious exercise.'' We also delete references to §§ 75.712 and 75.713, as we are proposing to delete §§ 75.712 and

[70] *See Hobby Lobby Stores,* 573 U.S. at 725; *Thomas* v. *Review Bd. of Ind. Emp't Sec. Div.,* 450 U.S. 707, 715–16 (1981).

[71] *Hobby Lobby Stores,* 573 U.S. at 725 (quoting *Thomas,* 450 U.S. at 715).

[72] *Hobby Lobby Stores,* 573 U.S. at 725.

[73] *Id.* (quoting *Thomas,* 450 U.S. at 716).

75.713 altogether. We propose to revise the definition of direct Federal financial assistance to mean financial assistance received by an entity selected by the government or a ''pass through entity.'' We define a ''pass through entity'' as a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts direct Federal financial assistance and distributes that assistance to other organizations. We revise the definition of ''indirect Federal financial assistance'' to refer to financial assistance received by a service provider when the service provider is paid for services rendered as a means of a voucher, certificate, etc., to a beneficiary who is able to make a choice of a service provider. The definition of ''Federal financial assistance'' does not include a tax credit, deduction, exemption, guaranty contract, or use of any assistance of any individual who is the ultimate beneficiary. We incorporate the definition of ''religious exercise'' in RFRA, 42 U.S.C. 2000cc–5(7)(A). We clarify that these definitions would apply to Appendices A and B described below.

We add a sentence to paragraph (d)(1) to provide that a faith-based organization retains the protections of law described in the Attorney General's Memorandum on Religious Liberty. We also clarify in paragraph (d)(2) that a faith-based organization that applies for or receives a grant under a program of the Department is not required to conceal religious art, icons, scriptures, etc., from its facilities and may select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization.

We clarify in paragraph (e) that a faith-based organization that receives indirect Federal financial assistance is not required to modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

There are no proposed changes to paragraph (f).

We propose adding a sentence at the end of paragraph (g) to clarify that an organization qualifying for an exemption from the Federal prohibition on employment discrimination on the basis of religion may select its employees on the basis of their acceptance or adherence to the religious tenets of the organization.

Finally, we propose adding paragraph (h) to provide that the Department will not advantage or disadvantage one religion over another and will not advantage or disadvantage one religion in favor of a secular organization.

Reasons: In *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* the Supreme Court held that laws and policies may provide benefits in ways that are neutral and generally applicable without regard to religion, but policies that single out the religious for disfavored treatment violate the Free Exercise Clause.[74] The revisions to §§ 75.52 and 76.52 remove references to regulations that impose additional burdens on faith-based organizations but not secular organizations such as the requirement to identify alternative secular providers and provide a written notice. These revisions reflect time-honored First Amendment principles that faith-based organizations should neither suffer a disadvantage nor gain an advantage due to their religious character.

These proposed regulations also seek to address and prevent any confusion about the ability of faith-based organizations to qualify for grants. Consistent with the First Amendment and RFRA, these revisions provide that a faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts for which such other organizations are eligible and considering any permissible accommodation. The revisions to §§ 75.52 and 76.52 further clarify that faith-based organizations do not lose the protection of the laws described in the Attorney General's Memorandum on Religious Liberty by accepting Federal financial assistance. For example, these faith-based organizations may continue selecting board members based on their adherence to the religious tenets of the organization.

The Secretary proposes changes to §§ 75.52 and 76.52 for the reasons stated in ''Background—Part 1 (Religious Liberty)'' and for the following reasons:

The Secretary proposes to revise § 75.52(a)(1) to clarify the text by eliminating extraneous language and to align it more closely with RFRA. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

The Secretary proposes to align § 75.52(a)(2) more closely with the First Amendment and RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017)); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018).

We propose to add § 75.52(a)(3) to align the text more closely with the First Amendment, RFRA, and other Federal regulations. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(d).

We proposed to change § 75.52(a)(4) to align the text more closely with the First Amendment, RFRA, and other Federal regulations. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(d).

In § 75.52(c)(1) we propose to clarify the text by eliminating extraneous language and to align it more closely with E.O. No. 13559, 75 FR 71319 (November 17, 2010), and E.O. 13279, 67 FR 77141 (December 12, 2002).

We propose to revise § 75.52(c)(3)(i) and (c)(3)(ii) to provide clarity.

The Secretary proposes to change § 75.52(c)(3)(ii)(B) to align the text more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

We propose to delete § 75.52(c)(3)(ii)(C) to align the text more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017).

We propose to change § 75.52(c)(3)(iii) in accordance with E.O. 13279, 67 FR 77141 (December 12, 2002).

We propose to revise § 75.52(c)(3)(iv) to provide clarity.

We propose to change § 75.52(c)(3)(v) to align the text more closely with the definitions used in the RFRA and with the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc–5(7)(A). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

[74] 137 S. Ct. at 2021–25.

In § 75.52(d)(1), we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 75.52(d)(2) we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

We proposed to align § 75.52(e) more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 75.52(g) we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); princip les 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

We proposed to change § 75.52(h) to align the text more closely with the First Amendment. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 76.52(a)(1), we propose to clarify the text by eliminating extraneous language and to align it more closely with RFRA. *See, e.g.,* principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,* 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

We propose to align § 76.52(a)(2) more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), *and* E.O. 13831, 83 FR 20715 (May 8, 2018).

We propose to align § 76.52(a)(3) more closely with the First Amendment, RFRA, and other Federal regulations. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); 28 CFR 38.5(d); principles 5, 6, 7, 8, 10, 13, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

We propose to align § 76.52(a)(4) more closely with the First Amendment, RFRA, and other Federal regulations. *See, e.g., Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); 28 CFR 38.5(d).

In § 76.52(c)(1) we propose to clarify the text by eliminating extraneous language and to align it more closely with E.O. 13559, 75 FR 71319 (November 17, 2010), and E.O. 13279, 67 FR 77141 (December 12, 2002).

We propose to change § 76.52(c)(3)(i) to provide clarity.

We propose to align § 76.52(c)(3)(ii)(B) more closely with the First Amendment. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017)).

We propose to revise § 76.52(c)(3)(ii)(C) in accordance with section 2(b) of EO 13831, 83 FR 20715 (May 3, 2018).

We propose to revise § 76.52(c)(3)(iii) in accordance with E.O. 13279, 67 FR 77141 (December 12, 2002).

We propose to revise § 76.52(c)(3)(iv) to provide clarity.

We propose to revise § 76.52(c)(3)(v) to align the text more closely with the definitions used in RFRA and with RLUIPA, 42 U.S.C. 2000cc–5(7)(A). *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 76.52(d)(1) we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

We propose to clarify § 76.52(d)(2) by eliminating extraneous language, and to align it more closely with the First Amendment and RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

We propose to align § 76.52(e) more closely with the First Amendment and RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

In § 76.52(g) we propose to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and RFRA. *See, e.g.,* E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

We propose to align § 76.52(h) more closely with the First Amendment. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

34 CFR 75.63 and 76.53 Severability

Current Regulations: None.

Proposed Regulations: Proposed §§ 75.63 and 76.53 would make clear that, if any part of the proposed regulations for part 75, subpart A, or for part 76, subpart A, respectively, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

§§ 75.712, 75.713, 76.712, and 76.713 Beneficiary Protections: Written Notice and Referral Requirements

Current Regulations: As previously stated, part 75 addresses direct grant programs and part 76 addresses State-Administered Formula Grant programs. Sections 75.712, 75.713, 76.712, and 76.713 contain parallel provisions and require faith-based organizations but not other organizations to follow referral procedures and provide specific written notices to potential beneficiaries.

Proposed Regulations: We propose to remove these sections.

Reasons: In *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* the Supreme Court held that laws and policies may provide benefits in ways that are neutral and generally applicable without regard to religion, but policies that single out the religious for disfavored treatment violate the Free Exercise Clause.[75] Sections 75.712 and 76.712 impose an additional burden on faith-based organizations to identify alternative secular providers but do not impose such a burden on secular organizations to identify an alternative faith-based provider or an alternative secular provider. Similarly, §§ 75.713 and 76.713 impose an additional burden on faith-based organizations to provide a written notice that is not required for secular organizations, and this written notice provides a method for filing a complaint against a faith-based organization without providing any method for filing a complaint against a secular organization. We are removing these regulations to comport with Supreme Court jurisprudence that faith-based organizations should neither suffer a disadvantage nor gain an advantage due to their religious character.

The Secretary proposes to remove §§ 75.712, 75.713, 76.712, and 76.713 for the reasons stated in ''Background—Part 1 (Religious Liberty),'' and to align the Department's regulations more closely with the First Amendment and RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); E.O. 13279, 67 FR 77141 (December 12, 2002), *as amended by* E.O. 13559, 75 FR 71319 (November 17, 2010), and Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

[75] 137 S. Ct. at 2021–25.

§§ 75.714 and 76.714 Subgrants, Contracts, and Other Agreements With Faith-Based Organizations

Current Regulations: As previously stated, part 75 addresses Direct Grant Programs and part 76 addresses State-Administered Formula Grant Programs. Sections 75.714 and 76.714 are parallel provisions and provide that if a grantee under a discretionary grant program of the Department has the authority under the grant to select a private organization to provide services supported by direct Federal financial assistance under the program by subgrant, contract, or other agreement, the grantee must ensure compliance with applicable Federal requirements governing contracts, grants, and other agreements with faith-based organizations.

Proposed Regulations: We propose to treat religious and secular entities equally with respect to subgrants and other contracts and agreements, by striking references to §§ 75.712 and 75.713 in § 75.714 any by striking references to §§ 76.712 and 76.713 in § 76.714. As explained above, §§ 75.712, 75.713, 76.712, and 76.713 impose additional burdens on faith-based organizations but not secular organizations. We propose to add references to proposed Appendices A and B, which are discussed, below, and also propose to change ''intermediary'' to ''pass-through entity,'' which is defined in proposed §§ 75.52(c)(3)(iv) and 76.52(c)(3)(iv).

Reasons: As previously stated, we are proposing to delete §§ 75.712, 75.713, 75.714, and 76.714 altogether, and deleting references to these regulations in 34 CFR 75.714 and 76.714 is a conforming revision. We also add references to Appendices A and B, and the purpose for these appendices is explained below. We propose to replace ''intermediary,'' which is not defined in these regulations, with ''pass through-entity,'' which is defined in proposed §§ 75.52(c)(3)(iv) and 76.52(c)(3)(iv), respectively, to provide greater clarity.

The Secretary proposes changes to §§ 75.714 and 76.714 for the reasons stated in ''Background—Part 1 (Religious Liberty)'' and in accordance with Section 2(b) of E.O. 13831, 83 FR 20715 (May 3, 2018).

34 CFR 75.741 and 76.784 Severability

Current Regulations: None.

Proposed Regulations: Proposed §§ 75.741 and 76.784 would make clear that, if any part of the proposed regulations for part 75, subpart F, or for part 76, subpart G, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Appendix A to Parts 75 and 76—Form of Required Notice to Beneficiaries

Current Regulations: Appendix A to Parts 75 and 76 includes the written notice of beneficiary rights and beneficiary referral request to identify a secular provider. Appendix A is referenced as a requirement for faith-based organizations but not any other organization in 2 CFR 3474.15 as well as 34 CFR 75.52, 76.52, 75.712, 76.712, 75.713, 76.713, 75.714, and 76.714.

Proposed Regulations: We propose to revise Appendix A to Parts 75 and 76 and add Appendix B to provide information to faith-based organizations regarding their rights and responsibilities with respect to Department funding opportunities. We eliminate the written notice and referral requirements in Appendix A. Under the proposed rule, Appendix A instead provides language that should be included in notices or announcements of award opportunities, and Appendix B provides language that should be included in a notice of award or contract. Appendices A and B contain substantially similar language, except that Appendix A includes an additional paragraph to expressly state in a notice or announcement of award opportunities that the Department will not discriminate against an organization on the basis of the organization's religious exercise or affiliation and that faith-based organizations may apply for the award on the same basis as any other organization. As previously stated, we propose to revise 2 CFR 3474.15 as well as 34 CFR 75.52, 76.52, 75.714, and 76.714 to require the Department and grantees to include language, substantially similar to that of proposed Appendices A and B, as revised.

Reasons: In *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* the Supreme Court held that laws and policies may

provide benefits in a way that is neutral and generally applicable without regard to religion, but policies that single out the religious for disfavored treatment violate the Free Exercise Clause.[76] Under the existing regulations, Appendix A, which is currently referenced as a requirement in 2 CFR 3474.15 and 34 CFR 75.52, 76.52, 75.712, 76.712, 75.713, 76.713, 75.714, and 76.714, imposes an additional burden on faith-based organizations to identify alternative secular providers but does not impose such a burden on secular organizations to identify an alternative faith-based provider or an alternative secular provider. Appendix A also imposes an additional burden on faith-based organizations to provide a written notice that is not required for secular organizations, and this written notice provides a method for filing a complaint against a faith-based organization without providing any method for filing a complaint against a secular organization. These requirements in Appendix A single out the religious for disfavored treatment. We are removing these requirements in accordance with the time-honored First Amendment principle that faith-based organizations should neither suffer a disadvantage nor gain an advantage due to their religious character.

The proposed revisions to Appendix A outline the faith-based organization's right to apply for an award on the same basis as any other organization, right to retain its independence from government interference, and right to continue to carry out its mission consistent with religious freedom protections in Federal law. Appendix A, as revised, also outlines restrictions on the use of direct Federal financial assistance such as using direct Federal financial assistance in contravention of the Establishment Clause and any other applicable requirements. Such language in a notice or announcement of award opportunities will help correct any misconceptions about faith-based organizations' eligibility to qualify for grants and how faith-based organizations may use direct Federal financial assistance.

The Secretary proposes changes to Appendix A for the reasons stated in ''Background—Part 1 (Religious Liberty).'' Appendix A also is revised to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017)); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order 13559, 75 FR 71319 (Nov. 17, 2010), and Exec. Order 13831, 83 FR 20715 (May 8, 2018).

Section 106.12 Educational Institutions Controlled by Religious Organizations

Current Regulations: Current 34 CFR 106.12(a) addresses the exemption in Title IX, 20 U.S.C. 1681(a)(3), for educational institutions controlled by a religious organization, to the extent that application of Title IX and its implementing regulations would be inconsistent with the religious tenets of the organization.[77]

Proposed Regulations: We propose adding paragraph (c) to 34 CFR 106.12 to define the phrase ''controlled by a religious organization,'' as educational institutions, which are controlled by a religious organization, are eligible to assert the exemption.

Reasons: Title IX, 20 U.S.C. 1681(a)(3), does not directly address how educational institutions demonstrate whether they are controlled by a religious organization. Nor does the statute provide necessary clarity that a recipient can itself be a religious organization that controls its own operations, curriculum, or other features. The criteria proposed in § 106.12(c) would partly codify existing factors that the Assistant Secretary for Civil Rights uses when evaluating a request for a religious exemption assurance from the Office for Civil Rights, and partly address concerns that there may be other means of establishing the necessary control. Additionally, because many of these factors are contained in non-binding guidance issued to OCR personnel dating back more than 30 years, providing clear terms in regulations would provide recipients and other stakeholders with clarity regarding what it means to be ''controlled by a religious organization.'' This clarity would create more predictability, consistency in enforcement, and confidence for educational institutions asserting the exemption.

The Department acknowledges that its guidance documents are not binding and do not have the force and effect of law.[78] The Department also lacks the power to bind third parties without appropriate **Federal Register** publication, notice, and comment or by failing to provide constitutional fair notice of its legal requirements before engaging in formal or informal adjudication.[79] The Department believes that it may properly conduct discretionary rulemaking only in the interstices of statutory silence and genuine ambiguity,[80] and that, as a policy matter, it should do so only rarely and cautiously. The Department acknowledges that its practices in the recent past regarding assertion of a religious exemption, including delays in responding to inquiries about the religious exemption, may have caused educational institutions to become reluctant to exercise their rights under the Free Exercise Clause of the First Amendment, and the Department would like educational institutions to fully and freely enjoy rights guaranteed under the Free Exercise Clause of the U.S. Constitution without shame or ridicule. Accordingly, the Department is engaging in notice-and-comment rulemaking to clarify how an educational institution may determine whether it is controlled by a religious organization to assert the religious exemption under Title IX.

The Department recognizes that religious organizations are organized in widely different ways that reflect their respective theologies. Some educational institutions are controlled by a board of trustees that includes ecclesiastical leaders from a particular religion or religious organization who have ultimate decision-making authority for the educational institutions. Other educational institutions are effectively controlled by religious organizations that have a non-hierarchical structure, such as a congregational structure. The Department does not discriminate against educational institutions that are controlled by religious organizations with different types of structures. Indeed, the Department has long recognized exemptions for educational institutions that are controlled by

[76] 137 S. Ct. at 2021–25.

[77] To claim this exemption, the current version of 34 CFR 106.12(b) requires recipients to write a letter to the Assistant Secretary stating which parts of the regulation conflict with a specific tenet of the religion. The Department issued a notice of proposed rulemaking on November 29, 2018, 83 FR 61462, to propose revising 34 CFR 106.12(b) to codify the existing practice of recognizing a recipient's religious exemption without expressly requiring submission of a letter. The Department stated in the November 29, 2018 NPRM that the statutory text of Title IX offers an exemption to religious entities without expressly requiring submission of a letter, and the Department believes that such a requirement is unnecessary. This NPRM, however, does not propose any changes to 34 CFR 106.12(b), which will be addressed through the November 29, 2018 NPRM.

[78] *Perez* v. *Mortgage Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Sotomayor, J.).

[79] *Id.* at 632 (citations omitted).

[80] *See City of Arlington* v. *FCC,* 133 S. Ct. 1863, 1871 (2013); *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 843 (1984).

religious organizations with hierarchical and non-hierarchical structures.

The Department is constitutionally obligated to broadly interpret ''controlled by a religious organization'' to avoid religious discrimination among institutions of varying denominations.[81] The Department also must take into account RFRA in promulgating its regulations and must not substantially burden a person's exercise of religion through its regulations. The Department's various proposed criteria reflect some methods that its Office for Civil Rights has used to evaluate and respond to a recipient's assertion of a religious exemption under Title IX. The proposed non-exhaustive list of criteria offers educational institutions different methods to demonstrate that they are eligible to assert an exemption to the extent application of Title IX and its implementing regulations would not be consistent with the institutions' religious tenets or practices.

The Department is proposing § 106.12(c)(1)–(5), which are factors consistent with the Department's past practice in acknowledging an educational institution's religious exemption. For instance, provisions (c)(1) through (c)(3) are based in part on guidance issued by former Assistant Secretary for Civil Rights Harry Singleton to Regional Civil Rights Directors on February 19, 1985.[82] To guide attorneys within the Office for Civil Rights as to whether an educational institution may establish ''control'' by a religious organization, the guidance relied on the March 1977 version of HEW Form 639A, which was issued by the former U.S. Department of Health, Education, and Welfare. Proposed provision (c)(1) acknowledges that schools or departments of divinity constitute educational institutions controlled by a religious organization. Proposed provision (c)(2) acknowledges a statement that the educational institution requires its faculty, students, or employees to be members of or otherwise engage in religious practices of, or espouse a personal belief in, the relief of the organization by which it claims to be controlled suffices to assert the religious exemption. Proposed provision (c)(3) acknowledges educational institutions that have a hierarchical structure or are otherwise controlled by an external religious organization may assert the religious exemption.

Proposed provisions (c)(4) and (c)(5) also are based in part on a letter from Acting Assistant Secretary for Civil Rights William L. Smith to OCR Senior Staff.[83] That letter details examples of certain information that schools provided in the past to assist the Office for Civil Rights' analysis as to whether a religious exemption assurance request is supported. For example, proposed provision (c)(4) recognizes a statement that the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution's community must engage in religious practices or espouse a personal religious belief suffices for an educational institution to assert the religious exemption. Proposed provision (c)(5) also acknowledges a statement that the educational institution subscribes to specific moral beliefs or practices, and a statement that members of the institution's community may be subjected to discipline for violating those beliefs or practices may sufficient for an educational institution to assert the religious exemption.

The Department also proposes § 106.12(c)(6) to expressly acknowledge that a recipient can itself be a religious organization that controls its own operations, curriculum, or other features. Proposed § 106.12(c)(6) provides an educational institution is eligible to assert the exemption if the educational institution has a statement that is approved by its governing board and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings. If an educational institution asserts an exemption pursuant to § 106.12(c)(6), the educational institution is not acknowledging that it is controlled by an external religious organization. Instead, the educational institution is asserting that the educational institution is itself the controlling religious organization. Section 106.12(c)(6), as proposed, is consistent with longstanding OCR practice in recognizing that the educational institution may itself be the controlling religious organization. For example, OCR has long recognized that a school or department of divinity is an educational institution controlled by a religious organization without any requirement that the school or department of divinity be controlled by an external religious organization. Additionally, § 106.12(c)(6) aligns well with the Department's definition of ''religious mission'' in § 600.2, which is defined as ''[a] published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings'' in the context of regulations about eligibility for Federal student aid under title IV of the Higher Education Act of 1965, as amended. An educational institution that has a religious mission, as defined in § 600.2, may choose to assert an exemption to the extent application of Title IX and its implementing regulations would not be consistent with the institution's religious tenets or practices.

Finally, the Department proposes § 106.12(c)(7) in recognition that Congress did not promulgate an exclusive list of criteria by which an educational institution may assert an exemption under Title IX. The Department's criteria essentially provide educational institutions with a safe harbor. The Department's criteria do not in any way limit the methods and means that an educational institution may use to demonstrate eligibility to assert the exemption.

Section 606.10 What activities may and may not be carried out under a grant?

Current Regulations: Under current regulations, funds appropriated under 20 U.S.C. 1101 *et seq.* for the Developing Hispanic-Serving Institutions Program may not support activities or services that merely relate to sectarian instruction or religious worship, without a clear understanding of said relation. The current regulations also define ''school or department of divinity,'' in part, as an institution or program that specifically prepares students ''to teach theological subjects,'' regardless of whether such a program operates with a secular purpose and without determining what such subjects might constitute.

Proposed Regulations: We propose to revise the current language, which may be overly broad and vague, with specific prohibitions on activities or services that constitute religious instruction, religious worship, or proselytization,

[81] *Larson* v. *Valente,* 456 U.S. 228, 244 (1982) (''The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.''); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171, 202 (2012) (Alito, J., concurring; joined by Kagan, J.) (arguing that a broad, functionalist interpretation of religious teachers for purposes of the ministerial exception is necessary to be inclusive of faiths like Islam and Jehovah's Witnesses).

[82] U.S. Dep't of Ed., Office for Civil Rights, Policy Guidance for Resolving Religious Exemption Requests (Feb. 19, 1985), *available at https://www2.ed.gov/about/offices/list/ocr/docs/singleton-memo-19850219.pdf.*

[83] U.S. Dep't of Ed., Office for Civil Rights, Memorandum to OCR Senior Staff regarding Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions (Oct. 11, 1989), *available at https://www2.ed.gov/about/offices/list/ocr/docs/smith-memo-19891011.pdf.*

which is consistent with 34 CFR 75.532 and 76.532. We more narrowly define a school or department of divinity as constituting programs of study meant only to prepare students to become ministers of religion or to enter into some other religious vocation.

Reasons: The current regulations may be interpreted in an overly broad manner so as to violate the First Amendment. Preventing an institution from using development grants to carry out any activities or services that relate to sectarian instruction or religious worship may prevent even a secular institution from teaching a class about various religions or discussing how these different religions engage in worship. Accordingly, we seek to narrow this regulation to prevent institutions from using development grants for activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 76.532. Sections 75.532 and 76.532 prohibit any grantee from using its grant to pay for religious instruction, religious worship, or proselytization.

The current regulations also prohibit an institution from using a development grant for activities provided by a school or department of divinity and defines a school or department of divinity as an institution, or department, or program of instruction designed to prepare the students to teach theological subjects. There may be some ambiguity concerning what it means to prepare the students to teach theological subjects since ''the study of theology does not necessarily implicate religious devotion or faith.'' [84] The funding restrictions thus could be interpreted to apply even to programs in which theology is treated as a subject of scholarly interest, without any devotional affiliation or religious creed. Such restrictions could cover departments with Ph.D. programs in religious studies that approach theology through an academic lens—sociological, anthropological, philosophical, or otherwise. For example, this regulation may prohibit an institution from using a grant for a secular department of religion that prepares students to teach various religions in a comparative religion course. The Department proposes to delete this language and clarify that an institution may not use development grants for activities provided by a school or department that is solely to prepare students to become ministers of religion or enter some other religious vocation.[85]

These revisions align the text more closely with the First Amendment, RFRA, and the Religious Land Use and Individualized Persons Act of 2000, 42 U.S.C. 2000cc–5(7)(A). *See e.g., Trinity Lutheran Church,* 173 S. Ct. at 2012; principles 2–4, 6–8, 10–11, 13, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order 13831, 83 FR 20715 (May 8, 2018).

34 CFR 606.11 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 606.11 would make clear that, if any part of the proposed regulations for part 606, subpart A, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

Section 607.10 What activities may and may not be carried out under a grant?

Current Regulations: Under current regulations, funds appropriated under 20 U.S.C. 1057 *et seq.* for the Strengthening Institutions Program (SIP) may not support activities or services that merely relate to sectarian instruction or religious worship, without a clear understanding of said relation. The current regulations also define ''school or department of divinity,'' in part, as an institution or program that specifically prepares students ''to teach theological subjects,'' regardless of whether such a program operates with a secular purpose and without determining what such subjects might constitute.

Proposed Regulations: We propose to revise the current language, which may be overly broad and vague, with specific prohibitions on activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 34 CFR 76.532. We more narrowly define a school or department of divinity as constituting programs of study meant only to prepare students to become ministers of religion or to enter into some other religious vocation.

Reasons: The current regulations may be interpreted in an overly broad manner so as to violate the First Amendment. Preventing an institution from using development grants to carry out any activities or services that relate to sectarian instruction or religious worship may prevent even a secular institution from teaching a class about various religions or discussing how these different religions engage in worship. Accordingly, we seek to narrow this regulation to prevent institutions from using development grants for activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 34 CFR 76.532. Sections 75.532 and 76.532 prohibit any grantee from using its grant to pay for religious instruction, religious worship, or proselytization.

The current regulations also prohibit an institution from using a development grant for activities provided by a school or department of divinity and defines a school or department of divinity as an institution, or department, or program of instruction designed to prepare the students to teach theological subjects. There may be some ambiguity concerning what it means to prepare the students to teach theological subjects since ''the study of theology does not necessarily implicate religious devotion or faith.'' [86] The funding restrictions thus could apply to programs in which theology is treated as a subject of scholarly interest, without any devotional affiliation or religious creed. Such restrictions could cover departments with Ph.D. programs in religious studies that approach theology through an academic lens—sociological, anthropological, philosophical or otherwise. For example, this regulation

[84] *See Locke* v. *Davey,* 540 U.S. 712, 734 (2004) (Thomas, J., dissenting); *see also* The Compact Oxford English Dictionary 2040 (2d ed. 1989) (defining theology as the ''study or science which treats of God, His nature and attributes, and His relations with man and the universe'').

[85] *See Locke* v. *Davey,* 540 U.S. 712 (2004).

[86] *See Locke* v. *Davey,* 540 U.S. 712, 734 (2004) (Thomas, J., dissenting); *see also* The Compact Oxford English Dictionary 2040 (2d ed. 1989) (defining theology as the ''study or science which treats of God, His nature and attributes, and His relations with man and the universe'').

may prohibit an institution from using a grant for a secular department of religion that prepares students to teach various religions in a comparative religion course. Accordingly, the Department proposes to delete this language and clarify that an institution may not use development grants for activities provided by a school or department that is solely to prepare students to become ministers of religion or enter some other religious vocation.[87]

These revisions align the text more closely with the First Amendment, RFRA, and the Religious Land Use and Individualized Persons Act of 2000, 42 U.S.C. 2000cc–5(7)(A). *See e.g., Trinity Lutheran Church,* 173 S. Ct. at 2012; principles 2–4, 6–8, 10–11, 13, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order 13831, 83 FR 20715 (May 8, 2018).

34 CFR 607.11 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 607.11 would make clear that, if any part of the proposed regulations for part 607, subpart A, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

Section 608.10 What activities may and may not be carried out under a grant?

Current Regulations: Under current regulations, funds appropriated under 20 U.S.C. 1060 through 20 U.S.C. 1063c for the Strengthening Historically Black Colleges and Universities Program may not support activities or services that merely relate to sectarian instruction or religious worship, without a clear understanding of said relation. The current regulations also define ''school or department of divinity,'' in part, as an institution or program that specifically prepares students ''to teach theological subjects,'' regardless of whether such a program operates with a secular purpose and without determining what such subjects might constitute.

Proposed Regulations: We propose to revise the current language, which may be overly broad and vague, with specific prohibitions on activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 76.532. We more narrowly define a school or department of divinity as constituting programs of study meant only to prepare students to become ministers of religion or to enter into some other religious vocation.

Reasons: The current regulations may be interpreted in an overly broad manner so as to violate the First Amendment. Preventing an institution from using development grants to carry out any activities or services that relate to sectarian instruction or religious worship may prevent even a secular institution from teaching a class about various religions or discussing how these different religions engage in worship. Accordingly, we seek to narrow this regulation to prevent institutions from using development grants for activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 76.532. Sections 75.532 and 76.532 prohibit any grantee from using its grant to pay for religious instruction, religious worship, or proselytization.

The current regulations also prohibit an institution from using a development grant for activities provided by a school or department of divinity and defines a school or department of divinity as an institution, or department, or program of instruction designed to prepare the students to teach theological subjects. There may be some ambiguity concerning what it means to prepare the students to teach theological subjects since ''the study of theology does not necessarily implicate religious devotion or faith.''[88] The funding restrictions thus could be interpreted to apply even to programs in which theology is treated as a subject of scholarly interest, without any devotional affiliation or religious creed. Such restrictions could cover departments with Ph.D. programs in religious studies that approach theology through an academic lens—sociological, anthropological, philosophical, or otherwise. For example, this regulation may prohibit an institution from using a grant for a secular department of religion that prepares students to teach various religions in a comparative religion course. The Department proposes to delete this language and clarify that an institution may not use development grants for activities provided by a school or department that is solely to prepare students to become ministers of religion or enter some other religious vocation.[89]

These revisions align the text more closely with the First Amendment, RFRA, and the Religious Land Use and Individualized Persons Act of 2000, 42 U.S.C. 2000cc–5(7)(A). *See e.g., Trinity Lutheran Church,* 173 S. Ct. at 2012; principles 2–4, 6–8, 10–11, 13, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order 13831, 83 FR 20715 (May 8, 2018).

34 CFR 608.12 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 608.12 would make clear that, if any part of the proposed regulations for part 608, subpart B, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious

[87] *See Locke,* 540 U.S. at 712.

[88] *See Locke* v. *Davey,* 540 U.S. 712, 734 (2004) (Thomas, J., dissenting); *see also* The Compact Oxford English Dictionary 2040 (2d ed. 1989) (defining theology as the ''study or science which treats of God, His nature and attributes, and His relations with man and the universe'').

[89] *See Locke* v. *Davey,* 540 U.S. 712 (2004).

Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

Section 609.10 What activities may and may not be carried out under a grant?

Current Regulations: Under current regulations, funds appropriated under 20 U.S.C. 1060 through 20 U.S.C. 1063c for the Strengthening Historically Black Graduate Institutions Program may not support activities or services that merely relate to sectarian instruction or religious worship, without a clear understanding of said relation. The current regulations also define ''school or department of divinity,'' in part, as an institution or program that specifically prepares students ''to teach theological subjects,'' regardless of whether such a program operates with a secular purpose and without determining what such subjects might constitute.

Proposed Regulations: We propose to revise the current language, which may be overly broad and vague, with specific prohibitions on activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 76.532. We more narrowly define a school or department of divinity as constituting programs of study meant only to prepare students to become ministers of religion or to enter into some other religious vocation.

Reasons: The current regulations may be interpreted in an overly broad manner so as to violate the First Amendment. Preventing an institution from using development grants to carry out any activities or services that relate to sectarian instruction or religious worship may prevent even a secular institution from teaching a class about various religions or discussing how these different religions engage in worship. Accordingly, we seek to narrow this regulation to prevent institutions from using development grants for activities or services that constitute religious instruction, religious worship, or proselytization, which is consistent with 34 CFR 75.532 and 76.532. Sections 75.532 and 76.532 prohibit any grantee from using its grant to pay for religious instruction, religious worship, or proselytization.

The current regulations also prohibit an institution from using a development grant for activities provided by a school or department of divinity and defines a school or department of divinity as an institution, or department, or program of instruction designed to prepare the students to teach theological subjects. There may be some ambiguity concerning what it means to prepare the students to teach theological subjects since ''the study of theology does not necessarily implicate religious devotion or faith.'' [90] The funding restrictions thus could be interpreted to apply even to programs in which theology is treated as a subject of scholarly interest, without any devotional affiliation or religious creed. Such restrictions could cover departments with Ph.D. programs in religious studies that approach theology through an academic lens—sociological, anthropological, philosophical, or otherwise. For example, this regulation may prohibit an institution from using a grant for a secular department of religion that prepares students to teach various religions in a comparative religion course. The Department proposes to delete this language and clarify that an institution may not use development grants for activities provided by a school or department that is solely to prepare students to become ministers of religion or enter some other religious vocation.[91]

These revisions align the text more closely with the First Amendment, RFRA, and the Religious Land Use and Individualized Persons Act of 2000, 42 U.S.C. 2000cc–5(7)(A). *See e.g., Trinity Lutheran Church,* 173 S. Ct. at 2012; principles 2–4, 6–8, 10–11, 13, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order 13831, 83 FR 20715 (May 8, 2018).

34 CFR 609.12 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 609.12 would make clear that, if any part of the proposed regulations for part 609, subpart B, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

Significant Proposed Regulations Part 2 (Free Inquiry)

(Sections 75.500 and 76.500) Constitutional Rights, Freedom of Inquiry, and Federal Statutes and Regulations on Nondiscrimination

Current Regulations: As previously noted, part 75 addresses direct grant programs, and part 76 addresses State-Administered Formula Grant Programs. Sections 75.500 and 76.500 of title 34 require grantees, States, and subgrantees to comply with various nondiscrimination laws and regulations.

Proposed Regulations: We propose to amend these regulations by requiring public institutions of higher education that are grantees or subgrantees to comply with the First Amendment to the U.S. Constitution, as a material condition of the grant; to require private institutions of higher education that are grantees or subgrantees to comply with their stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the grant; and to require public institutions to ensure faith-based student organizations are treated the same as secular student organizations, as a material condition of the grant.

The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. Similarly, the Department will determine that a private institution has not complied with stated institutional policies regarding freedom of speech or academic freedom only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. Both public and private institutions will be required to submit to the Secretary a copy of any such non-default, final judgment.

[90] *See Locke* v. *Davey,* 540 U.S. 712, 734 (2004) (Thomas, J., dissenting); *see also* The Compact Oxford English Dictionary 2040 (2d ed. 1989) (defining theology as the ''study or science which treats of God, His nature and attributes, and His relations with man and the universe'').

[91] *See Locke* v. *Davey,* 540 U.S. 712 (2004).

Reasons: The President's E.O. 13864 states that ''it is the policy of the Federal Government to encourage institutions to foster environments that promote open, intellectually engaging, and diverse debate, including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech for private institutions,'' and directs covered agencies, including the Department, to take necessary steps to ensure grantees and subgrantees comply with all Federal laws, regulations, and policies, including the First Amendment. The Department proposes these regulations for the reasons previously explained in the section ''Background—Part 2 (Free Inquiry)'' and for the reasons described below.

The proposed regulations would require public institutions to comply with the First Amendment to the United States Constitution as a material condition for receiving grants, including protections for freedom of speech, including academic freedom. Similarly, the proposed regulations would require private institutions to comply with their stated institutional policies regarding freedom of speech, including academic freedom, as a material condition for receiving grants.

The First Amendment applies to public institutions, and under the First Amendment, ''no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'' [92] As a result, officials at public institutions may not discriminate against their students' or employees' on the basis of their religious, political, philosophical, or ideological affinities, convictions, thoughts, ideas, or beliefs.[93] ''It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'' [94] The First Amendment's protections apply as much as in cyberspace as they do in physical space.[95] ''[T]he government,'' furthermore, ''offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.'' [96] Consequently, the First Amendment presumptively prohibits officials at public institutions from discriminating against others based on their viewpoints.[97]

While the government may choose to preclude certain subjects from a limited public forum it has created, ''the specific motivating ideology or the opinion or perspective of the speaker'' or speech cannot be ''the rationale for the restriction.'' [98] ''[A] forum [may exist] more in a metaphysical than in a spatial or geographic sense,'' perhaps as online fora or mandatory fee systems, but the traditional principles of forum analysis apply.[99] The restrictions themselves must be reasonable and viewpoint-neutral.[100] The courts skeptically will pierce the government's proffered justification and evaluate whether the actual motivation for excluding certain kinds of speech is illegitimate, for example, oppression of or antagonism towards certain kinds of speech.[101] Specifically, if the government is not ''confining'' this limited public forum ''to the limited and legitimate purposes for which it was created'' and instead is selectively choosing content in order to exclude viewpoints it disfavors, the First Amendment violation will be deemed to be ''blatant.'' [102] Such a restriction is no less repugnant to the First Amendment than the government's outright antagonism and suppression of *some select* views would be.[103]

Like the freedom of speech, the freedoms of press, of assembly and of association too are cornerstones of the First Amendment. The First Amendment exemplifies our national commitment to ''robust political debate'' because it guarantees the freedoms of speech, press, assembly and therefore association.[104] Regarding the freedom of press, it is well-established that ''a major purpose of that Amendment was to protect the free discussion of governmental affairs,'' through the means of a free press.[105] ''The First Amendment's guarantee of 'the freedom of speech, or of the press' prohibits a wide assortment of government restraints upon expression, but the core abuse against which it was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the 'evils' of the printing press in 16th- and 17-century England.'' [106] As the Supreme Court has recognized, ''[t]he Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars to play an important role in the discussion of public affairs.'' [107] Accordingly, ''the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.'' [108] As a result, ''[s]uppression of the right of the press to praise or criticize governmental agents and,'' more broadly, ''to clamor and contend for or against change, . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free.''[109] Even if the press is trying to ''influence [someone's] conduct by their activities'' or otherwise to have a ''coercive impact'' on them, it is still entitled to full First Amendment protection.[110] Nor can the government suppress press that is merely ''offensive,'' ''so long as the means are peaceful.'' [111] Under the First Amendment, the government may not indulge in the business of determining which ''communication . . . meet[s]'' or fails to satisfy the ''standards of acceptability.'' [112] Therefore, the Supreme Court has also held that ''[a]ny prior restraint on expression comes to th[e] [c]ourt[s] with a 'heavy presumption' against its constitutional validity.'' [113]

Furthermore, the First Amendment protects the freedom of peaceable assembly. The Supreme Court has recognized that ''[t]he right of peaceable assembly is a right cognate to . . . free speech and . . . is *equally fundamental.*'' [114] This protection encompasses ''classically political speech'' such as political protests and demonstrations; indeed, it ''operates at

[92] *Barnette,* 319 U.S. at 642.

[93] *See Tinker,* 393 U.S. at 505–07.

[94] *Id.* at 506.

[95] *See, e.g., Packingham* v. *North Carolina,* 137 S.Ct. 1730, 1735–36 (2017); *Reno* v. *Am. Civil Liberties Union,* 521 U.S. 844, 868 (1997).

[96] *Rosenberger* v. *Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 828–29 (1995).

[97] *See, e.g., id.* at 829–30.

[98] *Id.* at 829 (citing *Perry Ed. Ass'n* v. *Perry Local Educators' Ass'n,* 460 U.S. 37, 46 (1983)).

[99] *Rosenbeger,* 515 U.S. at 830.

[100] *See Cornelius* v. *NAACP Legal Defense and Ed. Fund, Inc.,* 473 U.S. 788, 806 (1985).

[101] *See Rosenberger,* 515 U.S. at 828–35.

[102] *Id.* at 829.

[103] *See Perry Ed. Ass'n,* 460 U.S. at 46.

[104] *Hustler Magazine* v. *Falwell,* 485 U.S. 46, 51 (1988).

[105] *Mills* v. *Ala.,* 384 U.S. 214, 218 (1966).

[106] *Thomas* v. *Chicago Park Dist.,* 534 U.S. 316, 320 (2002).

[107] *Mills,* 384 U.S. at 219 (citing *Lovell* v. *City of Griffin,* 303 U.S. 444 (1938)).

[108] *Mills,* 384 U.S. at 219.

[109] *Id.*

[110] *Org. for a Better Austin* v. *Keefe,* 402 U.S. 415, 419 (1971).

[111] *Id.*

[112] *Id.; see also Barnette,* 319 U.S. at 642.

[113] *Org. for a Better Austin,* 402 U.S. at 419 (quoting *Carroll* v. *President and Comm'rs of Princess Anne,* 393 U.S. 175, 181 (1968); *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58, 70 (1963)).

[114] *De Jonge* v. *Ore.,* 299 U.S. 353, 364 (1937) (emphasis added).

the core of the First Amendment.'' [115] The Supreme Court has held that ''constitutional rights may not be denied simply because of hostility to their assertion or exercise,'' which means that the government decision-maker's disagreement with the content of the speech or their fear of potential disorder is no justification for interfering with nonviolent and orderly demonstrations and protests.[116] Governmental interference with assemblies in which the ''peaceful expression of unpopular views'' is conducted violates the First Amendment.[117] In fact, the Supreme Court has even asserted that the First Amendment's protections are most necessary, and certainly appropriate, when speech '' 'invite[s] dispute,' '' '' 'induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.' '' [118] This is because, whether expressed in assemblies or elsewhere, ''[s]peech is often provocative and challenging. It may strike at prejudices and preconceptions, and have profound unsettling effects as it presses for acceptance of an idea.''[119] ''[U]nless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest,'' the freedoms of assembly (and speech) are ''protect[ions] against censorship or punishment.'' [120] This constitutional assurance is designed to guard against the ''standardization of ideas either by legislatures, courts, or dominant political or community groups.'' [121] The right to peaceable assembly, along with free speech, is central to our system of Republican government. As Chief Justice Hughes wrote for the Supreme Court in 1931, ''[t]he maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.'' [122] That concept rings as true today as it did almost nine decades ago.

The First Amendment also protects the freedom of association. As the Supreme Court observed in a seminal case near the peak of the Civil Rights Movement, the freedom of association's venerable root is ''the close nexus between the freedoms of speech and assembly.'' [123] The Supreme Court has long deemed the axiom ''that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of . . . freedom of speech'' to be ''beyond debate.'' [124] Under Supreme Court jurisprudence, ''it is [constitutionally] immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters.'' [125] Even restrictions on the freedom of association that do not outright proscribe such a freedom might violate the First and Fourteenth Amendments.[126] For example, because there exists a ''vital relationship between freedom to associate and privacy in one's associations,'' ''[c]ompelled disclosure of membership in an organization engaged in advocacy of particular beliefs'' is in tension with the freedom of association.[127] In practice, even ''the likelihood of a substantial restraint upon the exercise by . . . members [of an organization] of their right to freedom of association'' contravenes the First Amendment.[128] All this merges together to mean that even ''[governmental] action which *may* have the effect of curtailing the freedom to associate is subject to the closest [judicial] scrutiny'' under the First and Fourteenth Amendments.[129]

With respect to private institutions, the proposed regulations require they comply with their own stated institutional policies regarding freedom of speech, including academic freedom, as previously discussed in the section ''Background—Part 2 (Free Inquiry).'' Private institutions are often required by law to deliver what they have promised, including what they have promised about freedom of speech, including academic freedom, through their own policies.[130] As noted earlier, the private institution's failure to adhere to its own institutional policies can be a contractual breach but it can also be a tort or more. The most commonplace and obvious example is the contractual relationship between a student and his or her academic institution, as courts have recognized such a relationship for more than a century.[131] '' '[B]y the act of matriculation, together with payment of required fees, a contract between the student and the institution is created . . . .' '' [132] The institution's catalogues, bulletins, circulars, registration materials, and rules and regulations—and even faculty, curriculum, requirements, costs, facilities and special programs—made available to or known by the matriculating student—may constitute part of that contract.[133] Private institutions often attract, and keep, students and employees by assuring them of robust freedom of speech policies; this bargained-for exchange typically constitutes a

[115] *Boos* v. *Barry,* 485 U.S. 312, 318 (1988).

[116] *Cox* v. *Louisiana,* 379 U.S. 536, 550 (1965) (citations and internal quotation marks omitted).

[117] *Edwards* v. *South Carolina,* 372 U.S. 229, 237 (1963).

[118] *Id.* (quoting *Terminiello* v. *Chi.,* 337 U.S. 1, 5 (1949)).

[119] *Terminiello,* 337 U.S. at 5.

[120] *Id.*

[121] *Id.*

[122] *Stromberg* v. *Calif.,* 283 U.S. 359, 369 (1931).

[123] *NAACP* v. *Ala.,* 357 U.S. 449, 460 (1958) (citing *Thomas* v. *Collins,* 323 U.S. 516, 530 (1945); *De Jonge,* 299 U.S. at 364).

[124] *NAACP,* 357 U.S. at 460.

[125] *Id.*

[126] Even though the Supreme Court's *NAACP* opinion is formally based on the Due Process Clause of the Fourteenth Amendment, its First Amendment foundations are incontrovertible. *See NAACP,* 357 U.S. at 451, 460. After all, that opinion repeatedly invokes the freedoms of speech, assembly and of course association. *See id.* at 453, 460, 461. It was just that during this period, some Members of the Supreme Court, including this opinion's author, the second Justice Harlan, preferred to recognize the substantive component of the Due Process Clause of the Fourteenth Amendment as the independent and stand-alone basis for certain constitutional rights, rather than resorting to the Bill of Rights, which starts out with the First Amendment, as made applicable to the States through the Due Process Clause of the Fourteenth Amendment. *See, e.g., Poe* v. *Ullman,* 367 U.S. 497, 541–45 (1961) (Harlan, J., dissenting) (stating that ''it is not the particular enumeration of rights in the first eight Amendments which spells out the reach of Fourteenth Amendment due process, but rather, as was suggested in another context long before the adoption of that Amendment, those concepts which are considered to embrace those rights which are . . . fundamental; which belong . . . to the citizens of all free governments, for the purposes [of securing] which men enter into society.'') (citations and internal quotation marks omitted); *but see Adamson* v. *Calif.,* 332 U.S. 46, 69–91 (1947) (Black, J., dissenting); *id.* at 89 (Black, J., dissenting) (''I would follow what I believe was the original purpose of the Fourteenth Amendment—to extend to all the people of the nation the complete protection of the Bill of Rights.'').

[127] *NAACP,* 357 U.S. at 462 (citing *U.S.* v. *Rumely,* 345 U.S. 41, 56–58 (1953); *Am. Commc'n Ass'n* v. *Douds,* 339 U.S. 382, 402 (1950)).

[128] *NAACP,* 357 U.S. at 462.

[129] *Id.* at 461–62 (emphasis added).

[130] *See, e.g., Greene,* 271 F.Supp. at 613; *Zumbrun,* 25 Cal.App.3d at 10–11; *Searle,* 23 Cal.App.3d at 452; *Militana,* 184 So.2d at 703–04; *Anthony,* 224 App.Div. at 489–90; *Barker,* 278 Pa. at 122; *Goldstein,* 76 App.Div. at 82–83; *Bellevue Hosp. Med. Coll.,* 60 Hun at 107.

[131] *See, e.g., Greene,* 271 F.Supp. at 613; *Dixon,* 294 F.2d at 157; *Kashmiri,* 156 Cal. App. 4th at 824; *Zumbrun,* 25 Cal.App.3d at 10–11; *Searle,* 23 Cal.App.3d at 452; *Militana,* 184 So.2d at 703–04; *Anthony,* 224 App.Div. at 489–90; *John B. Stetson Univ.,* 88 Fla. at 517; *Barker,* 278 Pa. at 122; *Goldstein,* 76 App.Div. at 82–83; *Bellevue Hosp. Med. Coll.,* 60 Hun at 107.

[132] *Kashmiri,* 156 Cal. App. 4th at 824 (quoting *Andersen* v. *Regents of Univ. of Calif.* (1972) 22 Cal.App.3d 763, 769).

[133] *DeMarco* v. *Univ. of Health Sci.* (1976) 352 NE2d 356, 361–62; for the doctrine of specific promises in the educational context, *see also Johnson* v. *Schmitz,* 119 F.Supp.2d 90, 93 (D.Conn. 2000); *Zumbrun,* 25 Cal.App.3d at 10; *Wickstrom* v. *N. Idaho Coll.* (1986) 111 Idaho 450, 452; *see also* 34 CFR 685.222(c).

contract.[134] Such specific promises, particularly when contained in the institution's stated institutional policies, ''confer[] duties upon [the institution] which cannot be arbitrarily disregarded and may be judicially enforced.'' [135] ''[A] court that is asked to enforce an asserted 'contract' between a student and his university must examine the oral and written expressions of the parties in light of the policies and customs of the particular institution.''[136] Consequently, private institutions' failure to enforce these protections or their enforcing these protections selectively is often actionable in court on claims sounding in contract, tort, or otherwise.

The condition that private institutions comply with their stated institutional policies regarding freedom of speech is a material condition, including for purposes of liability under the Federal False Claims Act(FCA), 31 U.S.C. 3729, *et seq.*[137] Private institutions are subject to *qui tam* actions under the FCA.[138] Actions under the FCA permit either the Attorney General or a private party known as a *relator* to initiate a civil action alleging fraud on the Government.[139] The Secretary may require institutions to certify they have complied with their own freedom of expression policies as a material condition for receiving education grants. If these institutions fail to so certify, the Secretary may deny these institutions grants. If private institutions so certify but do not abide by their own stated institutional policies on free speech, including academic freedom, their conduct may give rise to a cause of action under the FCA. A relator, including the private institution's student or employee, may have standing to file a lawsuit under the FCA against the private institution.

Both E.O. 13864 and these proposed regulations rely upon the judiciary as the primary arbiter of alleged violations of First Amendment freedoms concerning public institutions and free speech protections in stated institutional policies regarding private institutions. The courts have cultivated a well-developed and intricate body of case law in this area. The courts, accordingly, are well situated to serve as the primary body to ''enforc[e] the First Amendment [and other free-speech protections, including those protecting academic freedom] as properly understood, '[t]he very purpose of [much of which] was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.' '' [140]

The burden and cost to the Department of tracking every litigation proceeding in the United States that implicates the First Amendment with respect to public institutions or that implicates stated institutional policies on freedom of speech, including academic freedom, with respect to private institutions is great. It is much easier for an institution of higher education to track any litigation against it. Accordingly, the institution of higher education subject to a final judgment would be required to submit a copy of the final judgment for a violation of the First Amendment, in the case of a public institution, or for a violation of stated institutional policies regarding freedom of speech, including academic freedom, in the case of private institutions, to the Secretary no later than 30 days after the final judgment is entered.

Under the proposed regulations, if there is a final, non-default judgment that an institution has violated the First Amendment or stated institutional policies regarding freedom of speech, including academic freedom, the Department would consider the grantee to be in violation of a material condition of the grant consistent with its other regulations and procedures. The Department may pursue existing remedies for noncompliance, which include imposing special conditions, temporarily withholding cash payments pending correction of the deficiency, suspension or termination of a Federal award, and potentially debarment, as described in Subpart G of Part 75 and Subpart I of Part 76 of Title 34 of the Code of Federal Regulations.[141]

With respect to Direct Grant Programs under Part 75 of Title 34 of the Code of Federal Regulations, the Department has authority to initiate a suspension or debarment proceeding under 2 CFR part 180, if the Department first determines that non-compliance cannot be remedied by imposing additional conditions.[142] Prior to pursuing a suspension or debarment proceeding, the Department may choose to temporarily withhold cash payments pending correction of the deficiency, disallow all or part of the cost of the activity or action not in compliance, wholly or partly suspend or terminate the Federal award, or withhold further Federal awards for the project or program.[143] Factors that a debarring official may consider include, but are not limited to, the following: The ''actual or potential harm or impact that results or may result from the wrongdoing,'' the ''frequency of incidents and/or duration of the wrongdoing,'' ''whether there is a pattern or prior history of wrongdoing,'' ''whether the wrongdoing was pervasive within [the institution of higher education],'' ''the kind of positions held by the individuals involved in the wrongdoing,'' ''whether [the institution's] principals tolerated the offense,'' and ''[o]ther factors that are appropriate in the circumstances of a particular case.'' [144] Upon taking any remedy for non-compliance, the Department will provide an institution an opportunity to object and provide

[134] *See, e.g., Johnson,* 119 F.Supp.2d at 93 (''Because a student bases his or her decision to attend a college or university, in significant part, on the documents received concerning core matters, such as faculty, curriculum, requirements, costs, facilities and special programs, application of contract principles based on these documents and other express or implied promises,'' consistent with certain limitations, ''appears sound.''); *DeMarco,* 352 NE2d at 361–62 (''A contract between a private institution and a student confers duties upon both parties which cannot be arbitrarily disregarded and may be judicially enforced.'').

[135] *DeMarco,* 352 NE2d at 362; *see also Ross* v. *Creighton Univ.,* 957 F.2d 410, 415–17 (7th Cir. 1992); *Kashmiri,* 156 Cal. App. 4th at 826; *Reynolds* v. *Sterling Coll., Inc.* (2000) 170 Vt. 620, 621; *CenCor, Inc.* v. *Tolman* (Colo. 1994) 868 P.2d 396; *Steinberg* v. *Chi. Med. Sch.* (1977) 371 NE2d 634.

[136] *Banerjee* v. *Roberts,* 641 F.Supp. 1093, 1106 (D.Conn. 1986).

[137] *See, e.g., Universal Health Servs., Inc.* v. *United States ex rel. Escobar,* 136 S. Ct. 1989, 2002–04 (2016). There are no cases directly on point under the False Claims Act because the Department and other Federal agencies have not required compliance with stated institutional policies on free speech, including academic freedom, as a material condition of a grant. The Department notes that public and private institutions also may be held accountable to the Department for any substantial misrepresentation under the Department's borrower defense to repayment regulations. 34 CFR 668.71.

[138] *See, e.g., United States ex rel. Hendow* v. *Univ. of Phoenix,* 461 F.3d 1166 (9th Cir. 2006) (holding relators, former enrollment counselors, properly alleged a cause of action against Phoenix University under the FCA for knowingly making false promises to comply with the incentive compensation ban to become eligible to receive Federal student aid under Title IV of the Higher Education Act of 1965, as amended). More recently, in March 2019 Duke University agreed to pay the Federal government $112.5 million to resolve allegations that it violated the FCA by submitting applications and progress reports that contained falsified research on Federal grants to National Institutes of Health (NIH) and to the Environmental Protection Agency (EPA). *United States ex rel. Thomas* v. *Duke Univ., et al.,* No. 1:17–cv–276 (M.D.N.C. 2019).

[139] 31 U.S.C. 3730.

[140] *See Janus* v. *Am. Fed'n of State, Cty., and Mun. Employees, Council 31,* 138 S.Ct. 2448, 2486 n.28 (2018) (quoting *Barnette,* 319 U.S. at 638).

[141] 34 CFR 75.901 (cross-referencing 2 CFR 200.338); 34 CFR 76.901; 2 CFR 180.800.

[142] 34 CFR 75.901(a); 2 CFR 200.338(d). The Department may impose additional conditions on the grantee to remedy noncompliance. 2 CFR 200.207.

[143] 2 CFR 200.338.

[144] 2 CFR 180.860.

information and documentation challenging the action.[145]

With respect to State-Administered Formula Grant Programs under Part 76 of Title 34 of the Code of Federal Regulations, if a state-administered formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act (GEPA), 20 U.S.C. 1221, *et seq.,* and the regulations in 34 CFR part 76.[146] The Department's Office of Administrative Law Judges conducts recovery of funds hearings pursuant to Section 452 of GEPA, hearings regarding the withholding of payments pursuant to Section 455 of GEPA, cease and desist hearings pursuant to Section 456 of GEPA, and other proceedings designated by the Secretary.[147] The regulations of the Office of Administrative Law Judges for purposes of enforcement are set forth in 34 CFR part 81.

The Department disburses billions of dollars each year through discretionary grant competitions. While each of these programs has unique purposes and goals, no student at a public institution should give up his or her constitutional rights in order to obtain educational services provided through a grant. At private institutions, the Department expects a fair, even-handed application of stated campus free speech policies, just as it expects institutions to accurately reflect their policies on numerous other matters. The Department will hold a private institution to its stated institutional policy on freedom of speech, including academic freedom, and will not require a private institution to adopt any particular policy on freedom of speech or academic freedom. As previously explained, religiously affiliated institutions may continue to avail themselves of their Free Exercise rights under the U.S. Constitution, and the Department must enforce E.O. 13864 in a manner that is consistent with applicable law, including the First Amendment.[148]

Finally, we propose to prohibit discrimination on the basis of religion by requiring public institutions that receive Federal research or education grants, as defined in E.O. 13864, to treat religious and nonreligious student organizations the same, by prohibiting the denial of any right, benefit, or privilege to a religious student organization that is otherwise afforded to other student organizations. We acknowledge that this proposed regulation is not a condition of participation in programs under title IV of the Higher Education Act, as amended. Student organizations enable individuals sharing common characteristics or beliefs to unite towards common goals, even if those goals are not shared by a majority of the student body or the public institution's administration.[149] This right to expressive association includes the right of a student organization to limit its leadership to individuals who share its religious beliefs without interference from the institution or students who do not share the organization's beliefs.[150] Student organizations also have the right to support their membership, help members to carry out the goals of the organization in accordance with its religious mission, and define criteria for accepting new members. Student organizations at public educational institutions should be able to restrict membership and leadership in their student organization on the basis of acceptance or adherence to the religious beliefs and tenets of the organization. Under the proposed regulations, a public institution that fails to afford religious student organizations the same rights, benefits, and privileges provided to other student organizations would be considered in violation of a material condition of the grant, and the Department could pursue existing remedies for noncompliance, which include imposing special conditions, temporarily withholding cash payments pending correction of the deficiency, suspension or termination of a Federal award, and potentially debarment.[151]

34 CFR 75.684 and 76.684 Severability

Current Regulations: None.

Proposed Regulations: Proposed §§ 75.684 and 76.684 would make clear that, if any part of the proposed regulations for part 75, subpart E, or for part 76, subpart F, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

Sections 75.700 and 76.700 Compliance With the U.S. Constitution, Statutes, Regulations, Stated Institutional Policies, and Applications

Current Regulations: Sections 75.700 and 76.700 require grantees and subgrantees to comply with all applicable laws, regulations, and approved applications.

Proposed Regulations: We propose to amend these sections to also include a reference to §§ 75.500 and 76.500.

Reasons: The Department proposes these regulations for the reasons previously explained in the section ''Background—Part 2 (Free Inquiry).'' The Department also would like to provide more specificity and clarity on the laws and regulations that apply to grantees and subgrantees as well as strengthen compliance with nondiscrimination requirements, especially by promoting, protecting, and preserving free speech protections as stated in institutional policies at private educational institutions.

34 CFR 75.741 and 76.784 Severability

Current Regulations: None.

Proposed Regulations: Proposed §§ 75.741 and 76.784 would make clear that, if any part of the proposed regulations for part 75, subpart F, or for part 76, subpart G, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to the Department, grantees, subgrantees, beneficiaries, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To

[145] 2 CFR 200.341.

[146] 34 CFR 76.1(b).

[147] 20 U.S.C. 1234; 34 CFR 76.901.

[148] Section 3(a) of E.O. 13864 states that covered agencies must advance the policy articulated in the Executive Order in a manner consistent with applicable law, including the First Amendment.

[149] *See, e.g., Rosenberger,* 515 U.S. at 829–37; *Bus. Leaders in Christ* v. *Univ. of Iowa,* 360 F. Supp. 3d 885, 899 (S.D. Iowa 2019).

[150] *Id.*

[151] 34 CFR 75.901 (cross-referencing 2 CFR 200.338); 2 CFR 180.800.

best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the provisions in ''Part 1—Religious Liberty'' should not affect the validity of any of the provisions in ''Part 2—Free Inquiry.''

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

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

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

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

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

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

Under E.O. 12866, section 3(f)(1), some of the changes proposed in this regulatory action would materially alter the rights and obligations of recipients of Federal financial assistance under title IV of the HEA. Therefore, OMB has determined that this is a significant regulatory action subject to review by OMB. Also, under E.O. 12866 and the Presidential Memorandum ''Plain Language in Government Writing,'' the Secretary invites comment on how easy these regulations are to understand in the *Clarity of the Regulations* section.

Under E.O. 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under E.O. 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The proposed regulations are a significant regulatory action under E.O. 12866 but do not impose total costs greater than zero. Accordingly, the Department is not required to identify two deregulatory actions under E.O. 13771.

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

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

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

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

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

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

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

We are issuing these proposed regulations only on a reasoned determination that their benefits justify their costs. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in E.O. 13563.

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

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Regulatory Action

The Department is proposing to revise the regulations described in ''Part 1—Religious Liberty'' of the Preamble in response to the United States Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,*[152] the United States Attorney General's October 6, 2017, Memorandum on Federal Law Protections for Religious Liberty pursuant to E.O. 13798 (Promoting Free Speech and Religious Liberty),[153] and E.O. 13831 (Establishment of a White House Faith and Opportunity Initiative). Additionally, the Department is proposing to revise the regulations described in ''Part 2- Free Inquiry'' of the preamble to enforce E.O. 13864,[154] Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities. The Department's need for regulatory action is explained more fully in ''Background—Part 1 (Religious Liberty)'' and ''Background—Part 2 (Free inquiry)'' in the Preamble.

Discussion of Costs and Benefits

The Department has analyzed the costs and benefits of complying with these proposed regulations. Due to the number of affected entities and recipients, we cannot estimate, with absolute precision, the likely effects of these proposed regulations. However, as discussed below, we do not believe that these proposed regulations would result in any significant costs to the Federal government, general public, or recipients of support under the affected programs.

Discussion of Costs, Benefits, and Transfers

2 CFR 3474.15

Proposed changes to 2 CFR 3747.15(a) would remove explanations of other provisions in the section and clarify that grantees and subgrantees are responsible

[152] 137 S. Ct. 2012 (2017).

[153] U.S. Att'y Gen. Mem. on Federal Law Protections for Religious Liberty (Oct. 6, 2017), *https://www.justice.gov/opa/press-release/file/1001891/download.*

[154] E.O. 13864 of March 21, 2019, ''Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,'' *https://www.federalregister.gov/documents/2019/03/26/2019-05934/improving-free-inquiry-transparency-and-accountability-at-colleges-and-universities.*

for ensuring the compliance of their subgrantees with all pertinent requirements. These changes would clarify the existing requirements on grantees and remove extraneous text from the regulation. This change is projected to have no effect.

Proposed changes to 2 CFR 3474.15(b)(1) would remove extraneous language and align the text more closely to the RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 2 CFR 3474.15(b)(2) would clarify the language and align the text more closely with RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

The proposed addition of 2 CFR 3474.15(b)(3) would clarify that organizations with religious character are eligible to participate in Department programs on the same basis as other organizations. The language mirrors language already included in other statutes and applicable regulations. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations and expanding the potential applicant pool for Department programs.

The proposed addition of 2 CFR 3474.15(b)(4) would clarify that organizations motivated or influenced by religious faith to provide social services are eligible to participate in Department-funded programs on the same basis as other organizations. The language mirrors language already included in other statutes and applicable regulations. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations and expanding the potential applicant pool for Department programs.

Proposed changes to 2 CFR 3474(c)(1) would align with the terms of section 2(b) of E.O. 13831. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 2 CFR 3474(d)(1) would remove extraneous language and align it more closely to the terms of E.O. 13279, as modified. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 2 CFR 3474.15(e)(1) would clarify the text and align the text more closely with RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 2 CFR 3474.15(e)(2) would remove extraneous language and align the text more closely with RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 2 CFR 3474.15(f) would align the text more closely with the RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 2 CFR 3474.15(g) would align the text more closely with the RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

The proposed addition of 2 CFR 3474.15(h) would align the text of this section more closely with the First Amendment. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR Part 75

34 CFR 75.51

The proposed addition of 34 CFR 75.51(b)(5) would provide additional clarity to organizations with sincerely held religious beliefs that they may otherwise qualify as a nonprofit organization under the terms of this section. We do not anticipate this change would have any quantifiable cost, but may result in transfers among recipients of Federal funds or beneficiaries of Department programs to the extent that organizations with sincerely held religious beliefs preventing their application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code are currently excluded from such opportunities. However, the Department does not have sufficient information available to quantify this impact at this time. The Department invites members of the public to provide relevant data on this issue.

34 CFR 75.52

Proposed changes to 34 CFR 75.52(a) would align the text more closely with the First Amendment, RFRA, and other Federal regulations. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 75.52(c)(1) would eliminate extraneous language and align the text more closely with E.O. 13559 and E.O. 13279. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 75.52(c)(3)(i) through (iv) would eliminate extraneous language to clarify the regulations and align the text more closely with the First Amendment. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 75.52(c)(v) would align the text more closely with definitions used in the RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 75.52(d), (e), and (g) would eliminate extraneous language and align the text more closely with the First Amendment and RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

The proposed addition of 34 CFR 75.52(h) would align the text of this section more closely with the First Amendment. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR 75.63

The proposed addition of 34 CFR 75.63 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR 75.500

Proposed changes to 34 CFR 75.500 would clarify that grantees that are public institutions must comply with the First Amendment and require grantees to submit to the Department a copy of any non-default, final judgment rendered against them in a State or Federal court alleging a violation of the First Amendment. Generally, the Department assumes that public institutions comply with the First Amendment, and therefore we assume negligible costs associated with this

proposed change.[155] Such an assumption of compliance is based on the Department's active monitoring of its grant portfolio. The Department has not identified any significant issues with grantees related to a failure to comply with the First Amendment and therefore does not anticipate any such issues moving forward. However, we are also aware that there are potentially scenarios in which grantees have had judgments issued against them related to a failure to comply with the First Amendment or institutional policies related to freedom of speech that we have been unaware of because such findings were not material to the effective operation of the grant. To the extent that such judgments have been issued in the past, we invite the public to provide the Department with examples so that we may update our estimates accordingly.

To the extent that grantees do have such judgments rendered against them, we believe the cost of compliance with this requirement would be negligible. The proposed rule does not require grantees to submit the information in any particular format or venue, and we believe the requirement could easily and efficiently be addressed by grantees by forwarding a copy of the judgment via email to their project officer. Such an approach would likely take less than one minute to accomplish with a *de minimis* effect on operating costs.

As noted above, grantees who are found to be in violation of the First Amendment or their institutional policies regarding freedom of speech will be considered to be in violation of a material condition of their grant and the Department will consider available remedies for the violation, which can include suspension or termination of Federal awards or debarment. As noted above, the Department is unaware of any prior instance in which a violation of the First Amendment or institutional policies regarding freedom of speech raised serious concerns about a grantee's ability to effectively carry out a Department grant. As such, we do not believe it is likely that such violations, if they do occur, would likely result in any large number of grants being terminated. Further, as with all violations of the conditions of a particular grant, decisions regarding appropriate remedies are made on a case by case basis, and we would therefore not be able to reliably estimate the effects on any particular grantee's awards, even if we assume a failure to comply with the First Amendment. Nonetheless, the potential suspension or termination of a Federal award and potential debarment would, in the event that they occurred, represent real costs to grantees. However, as noted above, we believe such outcomes would be generally unlikely and difficult to meaningfully predict. We also note that some grantees may, in the event that they face a lawsuit alleging violations of the First Amendment or institutional policies regarding freedom of speech, shift their litigation strategies to avoid non-default, summary judgments against them. To the extent that they did so, such actions could result in additional costs to grantees that would not occur in the absence of the rule. However, as noted above, we believe such violations are rare and any effect on the litigation strategy of grantees would be highly speculative and case-dependent. As such, we continue to estimate negligible costs associated with this provision.

However, we invite the public to submit any relevant information regarding the likely impact of this proposed change, including any relevant estimates of the number of relevant complaints filed against grantees in any given year.

34 CFR 75.684

The proposed addition of 34 CFR 75.684 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR 75.700

Proposed changes to 34 CFR 75.700 would add a cross-reference to 34 CFR 75.500. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR 75.712

The proposed deletion of 34 CFR 75.712 would remove a requirement that applies only to faith-based organizations and not other entities. The removal of this requirement likely would result in some cost savings for faith-based organizations. However, the Department does not have adequate information available at this time to estimate those savings. We invite the public to submit information on the extent to which the removal of these requirements would result in cost savings for faith-based organizations.

34 CFR 75.713

The proposed deletion of 34 CFR 75.713 would remove a requirement that applies only to faith-based organizations and not other entities. The removal of this requirement likely would result in some cost savings for faith-based organizations. However, the Department does not have adequate information available at this time to estimate those savings. We invite the public to submit information on the extent to which the removal of these requirements would result in cost savings for faith-based organizations.

34 CFR 75.714

Proposed changes to 34 CFR 75.714 would make conforming edits reflecting the proposed elimination of §§ 75.712 and 75.713 and require compliance with Appendices A and B of that part. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR 75.741

The proposed addition of 34 CFR 75.741 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR part 76

34 CFR 76.52

Proposed changes to 34 CFR 76.52(a) would align the text more closely with the First Amendment, RFRA, and other Federal regulations. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(c)(1) would remove extraneous language and align the text more closely with E.O. 13559. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(c)(ii)(B) would align the text more closely with the First Amendment. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(c)(ii)(C) would revise the text in accordance with section 2(b) of E.O.

[155] Not all of the reasonably-anticipated impacts of this proposed rule would be categorized as costs, cost savings or benefits. Consider, for example, the proposal that charging student groups for extra security if they invite controversial speakers to campus would be considered an impermissible violation on speech, and suppose that student groups A and B both invite speakers to campus, but only A invites controversial speakers and thus, in the absence of the rule, is charged greater security fees than B. If charging A and B equal fees would be a permissible compliance option (or a reasonably likely change brought about by the rule, even if not actually necessary for compliance), then the impact should be described as a rule-attributable transfer of value from B to A.

13831. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(c)(3)(iii) would revise the text in accordance with E.O. 13279. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(c)(3)(v) would align the text more closely with definitions in RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(d)(1) would remove extraneous language and align the text more closely with the First Amendment and RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(d)(2) would remove extraneous language and align the text more closely with the First Amendment. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(e) would align the text more closely with the First Amendment and RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to 34 CFR 76.52(g) would remove extraneous language and align the text more closely with the First Amendment and RFRA. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

The proposed addition of 34 CFR 76.52(h) would align the text of the section more closely with the First Amendment. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR 76.53

The proposed addition of 34 CFR 76.53 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR 76.500

Proposed changes to 34 CFR 76.500 would clarify that grantees that are public institutions must comply with the First Amendment and require grantees to submit to the Department a copy of any compliant filed against them in a State or Federal court, alleging a violation of the First Amendment. Generally, the Department assumes that public institutions comply with the First Amendment, and therefore we assume negligible costs associated with this proposed change. Such an assumption of compliance is based on the Department's active monitoring of its grant portfolio. The Department has not identified any significant issues with grantees related to a failure to comply with the First Amendment and therefore does not anticipate any such issues moving forward. However, we are also aware that there are potentially scenarios in which grantees have had judgments issued against them related to a failure to comply with the First Amendment or institutional policies related to freedom of speech that we have been unaware of because such findings were not material to the effective operation of the grant. To the extent that such judgments have been issued in the past, we invite the public to provide the Department with examples so that we may update our estimates accordingly.

To the extent that grantees do have such judgments rendered against them, we believe the cost of compliance with this requirement would be negligible. The proposed rule does not require grantees to submit the information in any particular format or venue, and we believe the requirement could easily and efficiently be addressed by grantees by forwarding a copy of the judgment via email to their project officer. Such an approach would likely take less than one minute to accomplish with a *de minimis* effect on operating costs.

As noted above, grantees who are found to be in violation of the First Amendment or their institutional policies regarding freedom of speech will be considered to be in violation of a material condition of their grant and the Department will consider available remedies for the violation, which can include suspension or termination of Federal awards or debarment. As noted above, the Department is unaware of any prior instance in which a violation of the First Amendment or institutional policies regarding freedom of speech raised serious concerns about a grantee's ability to effectively carry out a Department grant. As such, we do not believe it is likely that such violations, if they do occur, would likely result in any large number of grants being terminated. Further, as with all violations of the conditions of a particular grant, decisions regarding appropriate remedies are made on a case by case basis, and we would therefore not be able to reliably estimate the effects on any particular grantee's awards, even if we assume a failure to comply with the First Amendment. Nonetheless, the potential suspension or termination of a Federal award and potential debarment would, in the event that they occurred, represent real costs to grantees. However, as noted above, we believe such outcomes would be generally unlikely and difficult to meaningfully predict. We also note that some grantees may, in the event that they face a lawsuit alleging violations of the First Amendment or institutional policies regarding freedom of speech, shift their litigation strategies to avoid non-default, summary judgments against them. To the extent that they did so, such actions could result in additional costs to grantees that would not occur in the absence of the rule. However, as noted above, we believe such violations are rare and any effect on the litigation strategy of grantees would be highly speculative and case-dependent. As such, we continue to estimate negligible costs associated with this provision.

However, we invite the public to submit any relevant information regarding the likely impact of this proposed change, including any relevant estimates of the number of relevant complaints filed against grantees in any given year.

34 CFR 76.684

The proposed addition of 34 CFR 76.684 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR 76.700

Proposed changes to 34 CFR 76.700 would add a cross-reference to 34 CFR 76.500. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR 76.712

The proposed deletion of 34 CFR 76.712 would remove a requirement that applied only to faith-based organizations and not other entities. The removal of this requirement likely would result in some cost savings for faith-based organizations. However, the Department does not have adequate information available at this time to estimate those savings. We invite the public to submit information on the extent to which the removal of these

requirements will result in cost savings for faith-based organizations.

34 CFR 76.713

The proposed deletion of 34 CFR 76.713 would remove a requirement that applied only to faith-based organizations and not other entities. The removal of this requirement likely would result in some cost savings for faith-based organizations. However, the Department does not have adequate information available at this time to estimate those savings. We invite the public to submit information on the extent to which the removal of these requirements will result in cost savings for faith-based organizations.

34 CFR 76.714

Proposed changes to 34 CFR 76.714 would make conforming edits reflecting the proposed elimination of §§ 76.712 and 76.713. We do not anticipate this change to have any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

34 CFR 76.784

The proposed addition of 34 CFR 76.784 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 106

Proposed changes to 34 CFR 106.12 would define the term ''controlled by a religious organization'' for purposes of asserting the exemption under § 106.12(a). While these changes would provide substantial clarity to regulated entities about the standards for asserting the exemption, the Department does not believe that it would substantially change the number or composition of entities asserting the exemption. To the extent that it would, we believe there would be an expansion of previously eligible entities beginning to assert the exemption due to an increased clarity regarding the regulatory standard for doing so. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 606

Proposed changes to 34 CFR 606.10 would remove language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replace it with language more narrowly defining the limitation. We do not anticipate these proposed changes to result in any quantifiable costs. However, it is possible that grantees may shift their use of funds to support activities that are currently prohibited under the broader, current limitation. The Department does not have sufficient information available to quantify those effects at this time. We invite the public to submit relevant information about the extent to which grantees under this program participate in such activities and would be likely to shift their use of Federal funds in response to this change.

The proposed addition of 34 CFR 606.11 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 607

Proposed changes to 34 CFR 607.10 would remove language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replace it with language more narrowly defining the limitation. We do not anticipate these proposed changes to result in any quantifiable costs. However, it is possible that grantees may shift their use of funds to support activities that are currently prohibited under the broader, current limitation. The Department does not have sufficient information available to quantify those effects at this time. We invite the public to submit relevant information about the extent to which grantees under this program participate in such activities and would be likely to shift their use of Federal funds in response to this change.

The proposed addition of 34 CFR 607.11 would clarify that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

Alternatives Considered

The Department is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Department selected the approach that it believes maximizes net benefits. With respect to the regulations proposed in Part 1—Religious Liberty, it is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of E.O. 13559, while not adding any other requirements on those organizations. The Department considered whether to impose requirements, similar to those imposed solely on faith-based organizations, on all organizations and decided against such an alternative for the reasons discussed in the preamble. With respect to the regulations proposed in Part 2—Free Inquiry, the Department considered whether the Department, itself, should adjudicate claims alleging that a public institution violated the First Amendment or alleging that a private institution violated its stated institutional policies regarding freedom of speech. The Department decided against this alternative as both State and Federal courts are the best guardians of the First Amendment and have a well-developed body of case law concerning First Amendment freedoms.

Clarity of the Regulations

E.O. 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 106.9 Dissemination of policy.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. As described in the *Discussion of Costs and Benefits* section of this notice, the Department does not estimate that any of the proposed changes would result in quantifiable costs and, in some instances, the proposed revisions would reduce burden on particular types of entities, including small entities.

Paperwork Reduction Act of 1995

Under the proposed regulations, a public or private institution must submit to the Secretary a copy of certain non-default, final judgments by a State or Federal court. We believe such a submission would take no longer than 30 minutes per judgment.

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Intergovernmental Review

These programs are not subject to E.O. 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act (GEPA), 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

2 CFR Part 3474

Accounting, Auditing, Colleges and universities, State and local governments, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements.

34 CFR Part 75

Accounting, Copyright, Education, Grant programs-Education, Inventions and patents, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs-education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Private schools, Reporting and recordkeeping requirements, Virgin Islands.

34 Part 606

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

34 Part 607

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

34 Part 608

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

34 Part 609

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

Dated: December 10, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 3474 of title 2 of the Code of Federal Regulations and parts 75, 76, 106, 606, 607, 608 and 609 of title 34 of the Code of Federal Regulations, respectively, as follows:

TITLE II—GRANTS AND AGREEMENTS

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 3474 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200, unless otherwise noted.

■ 2. Revise § 3474.15 to read as follows:

§ 3474.15 Contracting with faith-based organizations and nondiscrimination.

(a) This section establishes responsibilities that grantees and subgrantees have in selecting contractors to provide direct Federal services under a program of the Department. Grantees and subgrantees must ensure compliance by their subgrantees with the provisions of this section and any implementing regulations or guidance.

(b)(1) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts for which such organizations are eligible and considering any permissible accommodation.

(2) In selecting providers of goods and services, grantees and subgrantees, including States, must not discriminate for or against a private organization on the basis of the organization's religious exercise or affiliation and must ensure that the award of contracts is free from political interference, or even the appearance of such interference, and is done on the basis of merit, not on the basis of religion or religious belief, or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendix A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee in administering Federal financial services from the Department shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that participate in Department programs or services, including organizations with religious character or affiliation, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate religious accommodation, and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee shall disqualify faith-based organizations from participating in Department-

funded programs or services because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious exercise or affiliation.

(c)(1) The provisions of 34 CFR 75.532 and 76.532 that apply to a faith-based organization that is a grantee or subgrantee also apply to a faith-based organization that contracts with a grantee or subgrantee, including a State.

(2) The requirements referenced under paragraph (c)(1) of this section do not apply to a faith-based organization that provides goods or services to a beneficiary under a program supported only by indirect Federal financial assistance, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(d)(1) A private organization that provides direct Federal services under a program of the Department and engages in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those activities separately in time or location from any programs or services funded by the Department through a contract with a grantee or subgrantee, including a State. Attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the contract must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (d)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by indirect Federal financial assistance, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(e)(1) A faith-based organization that contracts with a grantee or subgrantee, including a State, will retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization that receives Federal financial assistance from the Department does not lose the protections of law.

Note 1 to paragraph (e)(1): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing federal law protections for religious liberty).

(2) A faith-based organization that contracts with a grantee or subgrantee, including a State, may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without concealing, removing, or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(f) A private organization that contracts with a grantee or subgrantee, including a State, may not discriminate against a beneficiary or prospective beneficiary in the provision of program goods or services on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), is not forfeited when the organization contracts with a grantee or subgrantee. An organization qualifying for such an exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization.

(h) No grantee or subgrantee receiving funds under any Department program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(Authority: 20 U.S.C. 1221e–3 and 3474; 2 CFR part 200, E.O. 13559)

■ 3. Add § 3474.21 to read as follows:

§ 3474.21 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

TITLE 34—EDUCATION

PART 75—DIRECT GRANT PROGRAMS

■ 4. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 5. In § 75.51, revise paragraphs (b)(3) and (4) and add paragraph (b)(5) to read as follows:

§ 75.51 How to prove nonprofit status.

* * * * *

(b) * * *

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant;

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or

(5) For an entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3)of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (b)(1) through (b)(4) of this section.

■ 6. Revise § 75.52 to read as follows:

§ 75.52 Eligibility of faith-based organizations for a grant and nondiscrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Department on the same basis as any other organization, with respect to programs for which such other organizations are eligible and considering any permissible accommodation. The Department shall provide such religious accommodation as is consistent with Federal law, the Attorney General's Memorandum of October 6, 2017 (Federal Law Protections for Religious Liberty), and the Religion Clauses of the First Amendment to the U.S. Constitution.

(2) In the selection of grantees, the Department may not discriminate for or against a private organization on the basis of the organization's religious exercise or affiliation and must ensure that all decisions about grant awards are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or the lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendices A and B, respectively, to this part.

(3) No grant document, agreement, covenant, memorandum of

understanding, policy, or regulation that is used by the Department shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that receive grants under a program of the Department, including organizations with religious character or affiliation, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate religious accommodation, and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department shall disqualify faith-based organizations from applying for or receiving grants under a program of the Department because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious exercise or affiliation.

(b) The provisions of § 75.532 apply to a faith-based organization that receives a grant under a program of the Department.

(c)(1) A private organization that applies for and receives a grant under a program of the Department and engages in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those activities separately in time or location from any programs or services funded by a grant from the Department. Attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services funded by the grant must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (c)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by ''indirect Federal financial assistance.''

(3) For purposes of 2 CFR 3474.15, 34 CFR 75.52, 75.714, and Appendices A and B to this part, the following definitions apply:

(i) *Direct Federal financial assistance* means financial assistance received by an entity selected by the government or a pass-through entity (under this part) to carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to *Federal financial assistance* will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of *indirect Federal financial assistance.*

(ii) *Indirect Federal financial assistance* means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other similar means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider. Federal financial assistance provided to an organization is *indirect* under this definition if—

(A) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion; and

(B) The organization receives the assistance as the result of the genuine, independent choice of the beneficiary.

(iii) *Federal financial assistance* does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

(iv) *Pass-through entity* means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government-funded social services.

(v) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

Note 1 to paragraph (c)(3): The definitions of *direct Federal financial assistance* and *indirect Federal financial assistance* do not change the extent to which an organization is considered a recipient of Federal financial assistance as those terms are defined under 34 CFR parts 100, 104, 106, and 110.

(d)(1) A faith-based organization that applies for or receives a grant under a program of the Department will retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization that receives Federal financial assistance from the Department does not lose the protections of law.

Note 1 to paragraph (d)(1): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing federal law protections for religious liberty).

(2) A faith-based organization that applies for or receives a grant under a program of the Department may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without concealing, removing, or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and employees on the basis of their acceptance of or adherence to the religious tenets of the organization; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) An organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services or in outreach activities on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(f) If a grantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement federally funded activities, the grantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives financial assistance from the Department. An organization qualifying for such exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization.

(h) The Department shall not construe these provisions in such a way as to

advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

■ 7. Add § 75.63 to read as follows:

§ 75.63 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 8. Revise § 75.500 to read as follows:

§ 75.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) Each grantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR part 106
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR part 104.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

(b) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public (hereinafter ''public institution'') must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(1) Each grantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 30 days after such final, non-default judgment is entered.

(c) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter ''private institution'') must comply with its stated institutional policies regarding freedom of speech, including academic freedom. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(1) Each grantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 30 days after such final, non-default judgment is entered.

(d) A public institution shall not deny to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including full access to the facilities of the public institution and official recognition of the organization by the public institution) because of the beliefs, practices, policies, speech, membership standards, or leadership standards of the religious student organization.

(e) A grantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 9. Add § 75.684 to read as follows:

§ 75.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 10. Revise § 75.700 to read as follows:

§ 75.70 0 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee shall comply with § 75.500, applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.712 [Removed and Reserved]

■ 11. Remove and reserve § 75.712.

§ 75.713 [Removed and Reserved]

■ 12. Remove and reserve § 75.713.

■ 13. Revise § 75.714 to read as follows:

§ 75.714 Subgrants, contracts, and other agreements with faith-based organizations.

If a grantee under a discretionary grant program of the Department has the authority under the grant to select a private organization to provide services supported by direct Federal financial assistance under the program by subgrant, contract, or other agreement, the grantee must ensure compliance with applicable Federal requirements governing contracts, grants, and other agreements with faith-based organizations, including, as applicable, §§ 75.52 and 75.532, Appendices A and B to this part, and 2 CFR 3474.15. If the pass-through entity is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

■ 14. Add § 75.741 to read as follows:

§ 75.741 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 15. Revise Appendix A to part 75 to read as follows:

Appendix A to Part 75—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, part 75 and 42 U.S.C. 2000bb *et seq.* The Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise clauses of the Constitution, 42 U.S.C. 2000bb *et seq.,* 238n, 18113, 2000e–1(a) and 2000e–2(e), and 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department in contravention of the Establishment Clause or any other applicable requirements. Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 16. Add a new Appendix B to part 75, to read as follows:

Appendix B to Part 75—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise clauses of the Constitution, 42 U.S.C. 2000bb *et seq.,* 238n, 18113, 2000e–1(a) and 2000e–2(e), and 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from the Department in contravention of the Establishment Clause or any other applicable requirements. Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

PART 76—STATE-ADMINISTERED FORMULA GRANT PROGRAMS

■ 17. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 18. Revise § 75.52 to read as follows:

§ 76.52 Eligibility of faith-based organizations for a grant and nondiscrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a subgrant under a program of the Department on the same basis as any other private organization, with respect to programs for which such other organizations are eligible and considering any permissible accommodation. A State pass-through entity shall provide such religious accommodation as would be required to a recipient under Federal law, the Attorney General's Memorandum of October 6, 2017 (Federal Law Protections for Religious Liberty), and the Religion Clauses of the First Amendment to the U.S. Constitution.

(2) In the selection of subgrantees and contractors, States may not discriminate for or against a private organization on the basis of the organization's religious exercise or affiliation and must ensure that all decisions about subgrants are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or a lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendices A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by States in administering a program of the Department shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of subgrant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that receive a subgrant from a State under a State-Administered Formula Grant program of the Department, including organizations with religious character or affiliation, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate religious accommodation, and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance in contravention of the Establishment Clause.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by States shall disqualify faith-based organizations from applying for or receiving subgrants under a State-Administered Formula Grant program of the Department because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious exercise or affiliation.

(b) The provisions of § 76.532 apply to a faith-based organization that receives a subgrant from a State under a State-Administered Formula Grant program of the Department.

(c)(1) A private organization that applies for and receives a grant under a program of the Department and engages in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those activities separately in time or location from any programs or services funded by a subgrant from a State under a State-Administered Formula Grant program of the Department. Attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the subgrant must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (c)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by ''indirect Federal financial assistance.''

(3) For purposes of 2 CFR 3474.15 and 34 CFR 76.52 and 76.714, the following definitions apply:

(i) *Direct Federal financial assistance* means financial assistance received by an entity selected by the government or a pass-through entity (under this part) to carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''Federal financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance.''

(ii) *Indirect Federal financial assistance* means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to make a choice of service provider. Federal financial assistance provided to an organization is *indirect* under this definition if—

(A) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion; and

(B) The organization receives the assistance as the result of the genuine, independent choice of the beneficiary.

(iii) *Federal financial assistance* does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

(iv) *Pass-through entity* means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government-funded social services.

(v) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

Note 1 to paragraph (c)(3): The definitions of *direct Federal financial assistance* and *indirect Federal financial assistance* do not change the extent to which an organization is considered a *recipient* of *Federal financial assistance* as those terms are defined under 34 CFR parts 100, 104, 106, and 110.

(d)(1) A faith-based organization that applies for or receives a subgrant from a State under a State-Administered program of the Department will retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization that receives Federal financial assistance from the Department does not lose the protection of law.

Note 1 to paragraph (d)(1): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing federal law protections for religious liberty).

(2) A faith-based organization that applies for or receives a subgrant from a State under a State-administered formula grant program of the Department may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without concealing, removing, or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and employees on the basis of their acceptance of or adherence to the religious tenets of the organization; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) An organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services or in outreach activities on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(f) If a State or subgrantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement federally funded activities, the State or subgrantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives financial assistance from the Department. An organization qualifying for such exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization.

(h) The Department shall not construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

■ 19. Add § 76.53 to read as follows:

§ 76.53 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

■ 20. Revise § 76.500 to read as follows:

§ 76.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR part 106.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR part 104.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

(b) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public (hereinafter ''public institution'') must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(1) Each grantee that is a public institution also must submit to the

Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 30 days after such final, non-default judgment is entered.

(c) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter ''private institution'') must comply with its stated institutional policies regarding freedom of speech, including academic freedom. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(1) Each grantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 30 days after such final, non-default judgment is entered.

(d) Each State or subgrantee that is a public institution shall not deny to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including full access to the facilities of the public institution and official recognition of the organization by the public institution) because of the beliefs, practices, policies, speech, membership standards, or leadership standards of the religious student organization.

(e) A State or subgrantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

■ 21. Add § 76.684 to read as follows:

§ 76.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

■ 22. Revise § 76.700 to read as follows:

§ 76.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A State and a subgrantee shall comply with § 76.500, the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

§ 76.712 [Removed and Reserved]

■ 23. Remove and reserve § 76.712.

§ 76.713 [Removed and Reserved]

■ 24. Remove and reserve § 76.713.

■ 25. Revise § 76.714 to read as follows:

§ 76.714 Subgrants, contracts, and other agreements with faith-based organizations.

If a grantee under a State-administered formula grant program of the Department has the authority under the grant or subgrant to select a private organization to provide services supported by direct Federal financial assistance under the program by subgrant, contract, or other agreement, the grantee must ensure compliance with applicable Federal requirements governing contracts, grants, and other agreements with faith-based organizations, including, as applicable, §§ 76.52 and 76.532, and 2 CFR 3474.15. If the pass-through is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

■ 26. Add § 76.784 to read as follows:

§ 76.784 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 27. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.,* unless otherwise noted.

■ 28. In § 106.12, add paragraph (c) to to read as follows:

§ 106.12 Educational institutions controlled by religious organizations.

* * * * *

(c) Any of the following shall be sufficient to establish that an educational institution is eligible to assert an exemption to the extent application of this part would not be consistent with its religious tenets or practices:

(1) A statement that the educational institution is a school or department of divinity.

(2) A statement that the educational institution requires its faculty, students, or employees to be members of, or otherwise engage in religious practices of, or espouse a personal belief in, the religion of the organization by which it claims to be controlled.

(3) A statement that the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof, or is committed to the doctrines or practices of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

(4) A statement that the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution community must engage in the religious practices of, or espouse a personal belief in, the religion, its practices, or the doctrinal statement or statement of religious practices.

(5) A statement that the educational institution subscribes to specific moral beliefs or practices, and a statement that members of the institution community may be subjected to discipline for violating those beliefs or practices.

(6) A statement that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

(7) Other evidence establishing that an educational institution is controlled by a religious organization.

* * * * *

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

■ 29. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.,* unless otherwise noted.

■ 30. In § 606.10, revise paragraphs (c)(3) and (4) to read as follows:

§ 606.10 What activities may and may not be carried out under a grant?

* * * * *

(c) * * *

(3) Activities or services that constitute religious instruction, religious worship, or proselytization.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or solely to enter into some other religious vocation.

* * * * *

§§ 606.11 through 606.13 [Redesignated as §§ 606.12 through 606.14]

■ 31. Redesignate §§ 606.11 through 606.13 as §§ 606.12 through 606.14.

■ 32. Add new § 606.11 to read as follows:

§ 606.11 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1101 *et seq.*)

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

■ 33. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059g, 1067q, 1068–1068h unless otherwise noted.

■ 34. In § 607.10, revise paragraphs (c)(3) and (4) to read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(c) * * *

(3) Activities or services that constitute religious instruction, religious worship, or proselytization.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or solely to enter into some other religious vocation.

* * * * *

§§ 607.11 through 607.13 [Redesignated as §§ 607.12 through 607.14]

■ 35. Redesignate §§ 607.11 through 607.13 as §§ 607.12 through 607.14.

■ 36. Add new § 607.11 to read as follows:

§ 607.11 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1057 *et seq.*)

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

■ 37. The authority citation for part 608 is revised as follows:

Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h, unless otherwise noted.

■ 38. In § 608.10, revise paragraphs (b)(5) and (6) to read as follows:

§ 608.10 What activities may be carried out under a grant?

* * * * *

(b) * * *

(5) Activities or services that constitute religious instruction, religious worship, or proselytization.

(6) Activities provided by a school or department of divinity. For the purpose of this provision, a *school or department of divinity* means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or solely to enter into some other religious vocation.

* * * * *

■ 39. Add § 608.12 to read as follows:

§ 608.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

■ 40. The authority citation for part 609 is revised to read as follows:

Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h, unless otherwise noted.

■ 41. In § 609.10, revise paragraphs (b)(5) and (6) to read as follows:

§ 609.10 What activities may be carried out under a grant?

* * * * *

(b) * * *

(5) Activities or services that constitute religious instruction, religious worship, or proselytization.

(6) Activities provided by a school or department of divinity. For the purpose of this provision, a *school or department of divinity* means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or solely to enter into some other religious vocation.

* * * * *

■ 42. Add § 609.12 to read as follows:

§ 608.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h)

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