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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0662; Airspace Docket No. 19–AWA–2]

RIN 2120–AA66

Amendment of Class C Airspace; Lansing, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Lansing, MI, Class C airspace area by amending the effective hours to coincide with the associated radar approach control facility hours of operation. The designated boundaries and altitudes of the Lansing, MI, Class C airspace area are not changed. Class C airspace areas are predicated on an operational air traffic control tower serviced by a radar approach control facility. Additionally, this action establishes Class D airspace at Capital Region International Airport, MI, when the associated radar approach control facility is not in operation.

DATES: Effective date 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and

Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the effective hours of the Lansing, MI, Class C airspace to coincide with the associated radar approach control facility hours of operation and establishes Class D airspace at Capital Region International Airport, MI, when the associated radar approach control facility is not in operation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0662 in the **Federal Register** (84 FR 50346; September 25, 2019), amending the effective hours of the Lansing, MI, Class C airspace to coincide with the associated radar approach control facility hours of operation and establish Class D airspace at Capital Region International Airport, MI, when the associated radar approach control facility is not in operation. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Class C airspace areas are published in paragraph 4000 and Class D airspace areas are published in paragraph 5000 of FAA Order 7400.11D, dated August 8,

2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area modification and Class D airspace establishment proposed in this document will be published subsequently in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This rule amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Lansing, MI, Class C airspace effective hours to coincide with the associated radar approach control facility’s hours of operation. The designated boundaries and altitudes of the Class C airspace area are not changed. Additionally, this rule establishes the Lansing, MI, Class D airspace area at the Capital Region International Airport to provide controlled airspace for airport operations and instrument approach and departure procedures when the associated radar approach control facility is not in operation.

Regulatory Notices and Analyses

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

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that the actions of modifying the Lansing, MI, Class C airspace area by amending the effective hours to coincide with the associated radar approach control facility hours of operation, and establishing Class D airspace at Capital Region International Airport, MI when the associated radar approach control facility is not in operation, have no potential to cause significant environmental impacts. Therefore, because these airspace actions do not change the boundaries, altitudes, or operating requirements of the Lansing, MI, Class C airspace area, they have been categorically excluded from further environmental impact review in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR parts 1500–1508, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review, rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 4000—Subpart C—Class C Airspace.

* * * * *

AGL MI C Lansing, MI [Amended]

Capital Region International Airport, MI (Lat. 42°46'43" N, long. 84°35'10" W)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of Capital Region International Airport; and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of Capital Region International Airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 5000—Subpart D—Class D Airspace.

* * * * *

AGL MI D Lansing, MI [New]

Capital Region International Airport, MI (Lat. 42°46'43" N, long. 84°35'10" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 5-mile radius of Capital Region International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Washington, DC, on January 15, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–00992 Filed 1–21–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA–2019–N–5610]

Medical Devices; Radiology Devices; Classification of the Radiological Computer-Assisted Diagnostic Software for Lesions Suspicious for Cancer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the radiological computer-assisted diagnostic (CADx) software for lesions suspicious for cancer into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the radiological CADx software for lesions suspicious for cancer's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective January 22, 2020. The classification was applicable on July 19, 2017.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD, 20993–0002, 240–402–6357, ryan.lubert@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the CADx software for lesions suspicious for cancer as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is

automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person

then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining “substantial equivalence”). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On April 7, 2017, Quantitative Insights Inc. submitted a request for De Novo classification of the QuantX. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on July 19, 2017, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 92.2060.¹ We have named the generic type of device radiological computer-assisted diagnostic (CADx) software for lesions suspicious for cancer, and it is identified as an image processing device intended to aid in the characterization of lesions as suspicious for cancer identified on acquired medical images such as magnetic resonance, mammography, radiography, or computed tomography. The device characterizes lesions based on features or information extracted from the images and provides information about the lesion(s) to the user. Diagnostic and patient management decisions are made by the clinical user.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RADIOLOGICAL CADX SOFTWARE FOR LESIONS SUSPICIOUS FOR CANCER RISKS AND MITIGATION MEASURES

| Identified risk | Mitigation measures |
|---|---|
| Incorrect lesion(s) characterization leading to false positive results may result in incorrect patient management with possible adverse effects such as unnecessary treatment, unnecessary additional medical imaging and/or unnecessary additional diagnostic workup such as biopsy. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |
| Incorrect lesion(s) characterization leading to false negative results may lead to complications, including incorrect diagnosis and delay in disease management. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |
| The device could be misused to analyze images from an unintended patient population or on images acquired with incompatible imaging hardware or incompatible image acquisition parameters, leading to inappropriate diagnostic information being displayed to the user. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

TABLE 1—RADIOLOGICAL CADX SOFTWARE FOR LESIONS SUSPICIOUS FOR CANCER RISKS AND MITIGATION MEASURES—Continued

| Identified risk | Mitigation measures |
|---|---|
| Device failure could lead to the absence of results, delay of results or incorrect results, which could likewise lead to inaccurate patient assessment. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, radiological CADx software for lesions suspicious for cancer are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket

notification submissions, have been approved under OMB control number 0910–0120; the collections of information in part 820, regarding the quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 892.2060 to subpart B to read as follows:

§ 892.2060 Radiological computer-assisted diagnostic software for lesions suspicious of cancer.

(a) *Identification.* A radiological computer-assisted diagnostic software for lesions suspicious of cancer is an image processing prescription device intended to aid in the characterization of lesions as suspicious for cancer identified on acquired medical images such as magnetic resonance, mammography, radiography, or computed tomography. The device characterizes lesions based on features or information extracted from the images and provides information about the lesion(s) to the user. Diagnostic and patient management decisions are made by the clinical user.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) A detailed description of the image analysis algorithms including, but not limited to, a detailed description of the algorithm inputs and outputs, each major component or block, and algorithm limitations.

(ii) A detailed description of pre-specified performance testing protocols and dataset(s) used to assess whether the device will improve reader performance as intended.

(iii) Results from performance testing protocols that demonstrate that the device improves reader performance in the intended use population when used in accordance with the instructions for use. The performance assessment must be based on appropriate diagnostic accuracy measures (e.g., receiver operator characteristic plot, sensitivity, specificity, predictive value, and diagnostic likelihood ratio). The test dataset must contain sufficient numbers of cases from important cohorts (e.g., subsets defined by clinically relevant confounders, effect modifiers, concomitant diseases, and subsets defined by image acquisition characteristics) such that the performance estimates and confidence intervals of the device for these individual subsets can be characterized for the intended use population and imaging equipment.

(iv) Standalone performance testing protocols and results of the device.

(v) Appropriate software documentation (e.g., device hazard analysis; software requirements specification document; software design specification document; traceability analysis; and description of verification and validation activities including system level test protocol, pass/fail criteria, results, and cybersecurity).

(2) Labeling must include:

(i) A detailed description of the patient population for which the device is indicated for use.

(ii) A detailed description of the intended reading protocol.

(iii) A detailed description of the intended user and recommended user training.

(iv) A detailed description of the device inputs and outputs.

(v) A detailed description of compatible imaging hardware and imaging protocols.

(vi) Warnings, precautions, and limitations, including situations in which the device may fail or may not operate at its expected performance level (e.g., poor image quality or for certain subpopulations), as applicable.

(vii) Detailed instructions for use.
 (viii) A detailed summary of the performance testing, including: Test methods, dataset characteristics, results, and a summary of sub-analyses on case distributions stratified by relevant confounders (e.g., lesion and organ characteristics, disease stages, and imaging equipment).

Dated: January 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020-00497 Filed 1-21-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA-2019-N-5589]

Medical Devices; Radiology Devices; Classification of the Radiological Computer Aided Triage and Notification Software

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the radiological computer aided triage and notification software into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the radiological computer aided triage and notification software's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective January 22, 2020. The classification was applicable on February 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993-0002, 240-402-6357, ryan.lubert@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the radiological computer aided triage and notification software as class II (special

controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a

determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or PMA in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining "substantial equivalence"). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On September 29, 2017, Viz.ai, Inc., submitted a request for De Novo classification of the ContaCT. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on February 13, 2018, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 892.2080.¹ We have named the

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final

generic type of device radiological computer aided triage and notification, and it is identified as an image processing device intended to aid in prioritization and triage of radiological medical images. The device notifies a designated list of clinicians of the availability of time sensitive

radiological medical images for review based on computer aided image analysis of those images performed by the device. The device does not mark, highlight, or direct users' attention to a specific location in the original image. The device does not remove cases from a reading queue. The device operates in

parallel with the standard of care, which remains the default option for all cases.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RADIOLOGICAL COMPUTER AIDED TRIAGE AND NOTIFICATION SOFTWARE RISKS AND MITIGATION MEASURES

| Identified risks | Mitigation measures |
|--|---|
| Failure to prioritize images for review with positive findings may result in incorrect and/or delayed patient management. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |
| Positive notifications may result in deprioritization of review of images from other patients. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |
| The device could be misused to analyze images from an unintended patient population or on images acquired with incompatible imaging hardware or incompatible image acquisition parameters, leading to inappropriate notifications being displayed to the user. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |
| Device failure could lead to the absence of results, delay of results or incorrect results, which could likewise lead to inaccurate patient assessment. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |
| The triage and notification outputs of the device are inappropriately used for primary interpretation or as an adjunct for diagnosis outside the intended use of the device. | Certain design verification and validation activities identified in special control (1) and Certain labeling information identified in special control (2). |

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k).

At the time of classification, radiological computer aided triage and notification are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document "De Novo Classification Process (Evaluation of Automatic Class III Designation)" have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR's) interpretations of the Federal Register Act

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 892.2080 to subpart B to read as follows:

§ 892.2080 Radiological computer aided triage and notification software.

(a) *Identification.* Radiological computer aided triage and notification software is an image processing prescription device intended to aid in prioritization and triage of radiological medical images. The device notifies a designated list of clinicians of the availability of time sensitive radiological medical images for review based on computer aided image analysis of those images performed by the device. The device does not mark, highlight, or direct users' attention to a specific location in the original image. The device does not remove cases from

(44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

a reading queue. The device operates in parallel with the standard of care, which remains the default option for all cases.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) A detailed description of the notification and triage algorithms and all underlying image analysis algorithms including, but not limited to, a detailed description of the algorithm inputs and outputs, each major component or block, how the algorithm affects or relates to clinical practice or patient care, and any algorithm limitations.

(ii) A detailed description of pre-specified performance testing protocols and dataset(s) used to assess whether the device will provide effective triage (e.g., improved time to review of prioritized images for pre-specified clinicians).

(iii) Results from performance testing that demonstrate that the device will provide effective triage. The performance assessment must be based on an appropriate measure to estimate the clinical effectiveness. The test dataset must contain sufficient numbers of cases from important cohorts (e.g., subsets defined by clinically relevant confounders, effect modifiers, associated diseases, and subsets defined by image acquisition characteristics) such that the performance estimates and confidence intervals for these individual subsets can be characterized with the device for the intended use population and imaging equipment.

(iv) Stand-alone performance testing protocols and results of the device.

(v) Appropriate software documentation (e.g., device hazard analysis; software requirements specification document; software design specification document; traceability analysis; description of verification and validation activities including system level test protocol, pass/fail criteria, and results).

(2) Labeling must include the following:

(i) A detailed description of the patient population for which the device is indicated for use;

(ii) A detailed description of the intended user and user training that addresses appropriate use protocols for the device;

(iii) Discussion of warnings, precautions, and limitations must include situations in which the device may fail or may not operate at its expected performance level (e.g., poor image quality for certain subpopulations), as applicable;

(iv) A detailed description of compatible imaging hardware, imaging protocols, and requirements for input images;

(v) Device operating instructions; and

(vi) A detailed summary of the performance testing, including: test methods, dataset characteristics, triage effectiveness (e.g., improved time to review of prioritized images for pre-specified clinicians), diagnostic accuracy of algorithms informing triage decision, and results with associated statistical uncertainty (e.g., confidence intervals), including a summary of subanalyses on case distributions stratified by relevant confounders, such as lesion and organ characteristics, disease stages, and imaging equipment.

Dated: January 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00496 Filed 1–21–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA–2018–N–1553]

Radiology Devices; Reclassification of Medical Image Analyzers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a final order to reclassify medical image analyzers applied to mammography breast cancer, ultrasound breast lesions, radiograph lung nodules, and radiograph dental caries detection, postamendments class III devices (regulated under product code MYN), into class II (special controls), subject to premarket notification. These devices are intended to direct the clinician's attention to portions of an image that may reveal abnormalities during interpretation of patient radiology images by the clinician. FDA is also identifying the special controls that the Agency believes are necessary to provide a reasonable assurance of safety and effectiveness of the device type.

DATES: This order is effective February 21, 2020.

FOR FURTHER INFORMATION CONTACT:

Robert Ochs, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. 3680, Silver Spring, MD 20993–0002, 301–796–6661, *Robert.Ochs@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three classes of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three classes of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f)(1) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A postamendments device that has been initially classified in class III under section 513(f)(1) of the FD&C Act may be reclassified into class I or II under section 513(f)(3). Section 513(f)(3) of the FD&C Act provides that FDA acting by order can reclassify the device into class I or II on its own initiative, or in response to a petition from the manufacturer or importer of the device. To change the classification of the device, the proposed new class must have sufficient regulatory controls to provide a reasonable assurance of the safety and effectiveness of the device for its intended use.

On June 4, 2018 (83 FR 25598), FDA published in the **Federal Register** a proposed order to reclassify the device type from class III to class II, subject to premarket notification. The comment period on the proposed order closed on August 3, 2018.

II. Comments on the Proposed Order

In response to the June 4, 2018, proposed order (83 FR 25598), FDA received two comments including from

a healthcare professional in the medical device industry and a professional society by the close of the comment period, each containing one or more comments on one or more issues. We describe and respond to the comments in this section of the document. The order of response to the commenters is purely for organizational purposes and does not signify the comment's value or importance nor the order in which comments were received.

(Comment 1) One commenter supported the proposed reclassification and requested that the Agency provide examples to further clarify what devices may fall within the scope of the proposed reclassification action. The commenter offered three use cases as examples: (1) A concurrent-read software device that shows computer assisted or aided detection (CADE) marks (on the regions of interest) intended to draw the clinicians' attention during their standard review workflow, (2) a software device that provides quantitative measures of disease risk, and (3) a software device that suggests prioritization of the cases in a review list/worklist for a clinician's reading session.

(Response 1) FDA agrees that providing examples as part of the preamble would provide further clarity in the scope of the reclassification order. FDA stated in Section II of the proposed order (83 FR 25598) that, if finalized, the reclassification would cover medical image analyzers including CADE devices for mammography breast cancer, ultrasound breast lesions, radiograph lung nodules, and radiograph dental caries detection that are assigned product code MYN. Therefore, if example number 1 from the commenter above provided is a CADE device intended for use in the clinical applications noted above, it likely falls within the scope of this reclassification order. FDA believes that examples number 2 and number 3 identified in Comment 1 would not be appropriately classified as medical image analyzers or CADE devices. Therefore, these two examples are device types not covered by this reclassification. Specifically, FDA believes that example number 2 is likely a computer-aided diagnosis device, which FDA has classified separately under 21 CFR 892.2060 *Radiological computer-assisted diagnostic (CADx) software for lesions suspicious for cancer*, and example number 3 is likely a computer-aided triage device, which FDA has classified separately under 21 CFR 892.2080, *Radiological Computer Aided Triage and Notification Software*.

FDA believes that the identification language in § 892.2070(a) (21 CFR 892.2070) of the classification regulation as described in the proposed order adequately identifies the types of devices that would be affected by this reclassification action and declines to further modify the identification language for medical image analyzers.

(Comment 2) The commenter generally supported the proposed reclassification and proposed special controls but recommended the following additional special controls to ensure the safety and effectiveness of the devices:

- *Collect postmarket data:* The commenter recommends that FDA consider adding special controls that require the collection of postmarket data when necessary to ensure that the device performance is acceptable in clinical use and to allow for a comparison to premarket data submitted for 510(k) clearance.

- *Employ periodic retraining:* The commenter recommends that FDA consider adding special controls for periodic retraining of clinicians to ensure that they understand the use of the device according to device labeling and the appropriate reading protocol to follow.

- *Implement quality assurance requirements:* The commenter notes that there are no quality assurance requirements in the proposed special controls to assure the medical image analyzer does not fail or to ensure that it operates at its expected performance level. Accordingly, the commenter asks FDA to consider adding special controls for a well-defined device-specific quality assurance process.

(Response 2) FDA disagrees with this comment. The Agency believes that the special controls, as identified in the proposed order, together with general controls, are sufficient to provide reasonable assurance of safety and effectiveness of medical image analyzers. FDA does not believe that a requirement for collecting postmarket data as a special control is necessary to provide reasonable assurance of the safety and effectiveness for medical image analyzers devices. FDA has nearly 20 years of experience regulating medical image analyzers as class III devices considered within the scope of this reclassification, and postmarket studies have not been required during this period. Additionally, there have not been signals observed during this time that would suggest postmarket studies were necessary. As stated in the proposed order, in the past 10 years, there have been no medical device reports related to these CADE devices.

FDA has only classified one recall for these CADE devices due to distribution of the CADE device without prior premarket application approval. Further, FDA still maintains the authority to require manufacturers to conduct postmarket surveillance of class II devices under section 522 of the FD&C Act (21 U.S.C. 360I) when certain conditions are met.

FDA does not believe that an additional special control regarding user retraining is necessary to provide reasonable assurance of the safety and effectiveness of medical image analyzers. The Agency believes that it has identified the risk of misuse by a physician and that the measures described in this final order will be effective in mitigating this probable risk to health, mainly § 892.2070(b)(2) that requires the labeling of these devices to include a detailed description of the intended user and user training that addresses appropriate reading protocols for the device.

While FDA agrees that appropriate quality assurance (QA) approaches are helpful in ensuring that a medical image analyzer consistently operates at its expected performance level, FDA disagrees with the need to write specific QA requirements for the end-users into the special controls. FDA believes specifying end-user QA requirements may be redundant with the special controls already identified in this final order (see specifically § 892.2070(b)(1) and (2)), in combination with general controls, including especially the Quality System (QS) Regulations under part 820 (21 CFR part 820). In addition, because many different approaches to address QA exist, coupled with the general and special controls requirements that are already applicable to this device type, FDA does not believe that defining specific QA requirements in the special controls is necessary to reasonably assure safety, and FDA believes manufacturers should consider the need for, and most appropriate methods, to evaluate potential changes in CADE performance over time. This information should address the general controls as well as special controls (see specifically § 892.2070(b)(2)), including providing user training, identifying compatible hardware, identifying limitations, and providing operating instructions.

III. The Final Order

Based on the information discussed in the preamble to the proposed order (83 FR 25598, June 4, 2018), the comments received for the proposed order, prior panel discussions, and FDA's experiences over the years in reviewing

these device types, FDA concludes that special controls, in conjunction with general controls, will provide reasonable assurance of the safety and effectiveness of medical image analyzers. FDA is adopting its findings under section 513(f)(3) of the FD&C Act, as published in the preamble to the proposed order (83 FR 25598). FDA is issuing this final order to reclassify medical image analyzers, including CAde devices, for mammography breast cancer, ultrasound breast lesions, radiograph lung nodules, and radiograph dental caries detection from class III to class II, and establishing special controls by revising 21 CFR part 892.¹ In this final order, the Agency has identified the special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls, provide reasonable assurance of the safety and effectiveness of these devices.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of medical image analyzers, and therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market a new CAde device must obtain clearance of a premarket notification and demonstrate compliance with the special controls included in this final order, prior to marketing the device.

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

The device is assigned the generic name medical image analyzer, and identified as a medical image analyzers, including CAde devices, for mammography breast cancer, ultrasound breast lesions, radiograph lung nodules, and radiograph dental caries detection, is a prescription device that is intended to identify, mark, highlight, or in any other manner direct the clinicians' attention to portions of a radiology image that may reveal abnormalities during interpretation of patient radiology images by the clinicians. This device incorporates pattern recognition and data analysis capabilities and operates on previously acquired medical images. This device is not intended to replace the review by a qualified radiologist and is not intended to be used for triage or to recommend diagnosis.

Under this final order, the medical image analyzer is a prescription use only device under § 801.109 (21 CFR 801.109). Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of § 801.109 are met (referring to 21 U.S.C. 352(f)(1)). Under 21 CFR 807.81, the device continues to be subject to 510(k) requirements.

IV. Codification of Orders

Prior to the amendments in the Food and Drug Administration Safety and Innovation Act (FDASIA), section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended requires FDA to issue final orders rather than regulations, it also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i), as amended by FDASIA,

in this final order, we are proposing to codify the classification of medical image analyzers, applied to CAde devices for mammography breast cancer, ultrasound breast lesions, radiograph lung nodules, and radiograph dental caries detection in the new § 892.2070, under which medical image analyzers would be reclassified into class II.

V. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved FDA collections. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; and the collections of information in part 820 have been approved under OMB control number 0910–0073.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 892.2070 to subpart B to read as follows:

§ 892.2070 Medical image analyzer.

(a) *Identification.* Medical image analyzers, including computer-assisted/aided detection (CADe) devices for mammography breast cancer, ultrasound breast lesions, radiograph lung nodules, and radiograph dental caries detection, is a prescription device that is intended to identify, mark, highlight, or in any other manner direct the clinicians' attention to portions of a radiology image that may reveal abnormalities during interpretation of patient radiology images by the clinicians. This device incorporates pattern recognition and data analysis capabilities and operates on previously acquired medical images. This device is not intended to replace the review by a qualified radiologist, and is not intended to be used for triage, or to recommend diagnosis.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) A detailed description of the image analysis algorithms including a description of the algorithm inputs and outputs, each major component or block, and algorithm limitations.

(ii) A detailed description of pre-specified performance testing methods and dataset(s) used to assess whether the device will improve reader performance as intended and to characterize the standalone device performance. Performance testing includes one or more standalone tests, side-by-side comparisons, or a reader study, as applicable.

(iii) Results from performance testing that demonstrate that the device improves reader performance in the intended use population when used in accordance with the instructions for use. The performance assessment must be based on appropriate diagnostic accuracy measures (e.g., receiver operator characteristic plot, sensitivity, specificity, predictive value, and diagnostic likelihood ratio). The test dataset must contain a sufficient number of cases from important cohorts (e.g., subsets defined by clinically

relevant confounders, effect modifiers, concomitant diseases, and subsets defined by image acquisition characteristics) such that the performance estimates and confidence intervals of the device for these individual subsets can be characterized for the intended use population and imaging equipment.

(iv) Appropriate software documentation (e.g., device hazard analysis; software requirements specification document; software design specification document; traceability analysis; description of verification and validation activities including system level test protocol, pass/fail criteria, and results; and cybersecurity).

(2) Labeling must include the following:

(i) A detailed description of the patient population for which the device is indicated for use.

(ii) A detailed description of the intended reading protocol.

(iii) A detailed description of the intended user and user training that addresses appropriate reading protocols for the device.

(iv) A detailed description of the device inputs and outputs.

(v) A detailed description of compatible imaging hardware and imaging protocols.

(vi) Discussion of warnings, precautions, and limitations must include situations in which the device may fail or may not operate at its expected performance level (e.g., poor image quality or for certain subpopulations), as applicable.

(vii) Device operating instructions.

(viii) A detailed summary of the performance testing, including: test methods, dataset characteristics, results, and a summary of sub-analyses on case distributions stratified by relevant confounders, such as lesion and organ characteristics, disease stages, and imaging equipment.

Dated: January 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020-00494 Filed 1-21-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2020-0005; Internal Agency Docket No. FEMA-8613]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212-3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59.

Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency

Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain

management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

- 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

- 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---------------|---|----------------------------|--|
| Region VI | | | | |
| Texas: | | | | |
| Bee Cave, City of, Travis County | 481610 | N/A, Emerg; April 12, 1988, Reg; January 22, 2020, Susp. | January 22, 2020 ... | January 22, 2020. |
| Creedmoor, City of, Travis County ... | 481697 | N/A, Emerg; July 20, 2018, Reg; January 22, 2020, Susp. |do | Do. |
| Gonzales, City of, Gonzales County | 480254 | August 6, 1975, Emerg; June 15, 1979, Reg; January 22, 2020, Susp. |do | Do. |
| Gonzales County, Unincorporated Areas. | 480253 | November 8, 1973, Emerg; August 15, 1978, Reg; January 22, 2020, Susp. |do | Do. |
| Lakeway, City of, Travis County | 481303 | June 27, 1977, Emerg; November 5, 1980, Reg; January 22, 2020, Susp. |do | Do. |
| Mustang Ridge, City of, Caldwell and Travis Counties. | 481687 | N/A, Emerg; June 15, 2000, Reg; January 22, 2020, Susp. |do | Do. |
| Point Venture, Village of, Travis County. | 481691 | N/A, Emerg; May 29, 2002, Reg; January 22, 2020, Susp. |do | Do. |
| Rollingwood, City of, Travis County .. | 481029 | February 3, 1975, Emerg; September 29, 1978, Reg; January 22, 2020, Susp. |do | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---------------|---|----------------------------|--|
| San Leanna, Village of, Travis County. | 481305 | N/A, Emerg; March 11, 1980, Reg; January 22, 2020, Susp. |do | Do. |
| The Hills, Village of, Travis County ... | 480063 | N/A, Emerg; November 15, 2006, Reg; January 22, 2020, Susp. |do | Do. |
| Volente, Village of, Travis County | 481696 | N/A, Emerg; April 15, 2004, Reg; January 22, 2020, Susp. |do | Do. |
| West Lake Hills, City of, Travis County. | 481030 | March 10, 1976, Emerg; July 17, 1978, Reg; January 22, 2020, Susp. |do | Do. |
| Region VII | | | | |
| Kansas: Butler County, Unincorporated Areas. | 200037 | June 23, 1975, Emerg; March 2, 1981, Reg; January 22, 2020, Susp. |do | Do. |
| Missouri: Maryville, City of, Nodaway County. | 290264 | March 7, 1975, Emerg; September 18, 1985, Reg; January 22, 2020, Susp. | January 22, 2020 ... | January 22, 2020. |

*do =Ditto.

Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: January 6, 2020.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2020–00508 Filed 1–21–20; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register

Vol. 85, No. 14

Wednesday, January 22, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS-SC-19-0088; SC19-984-2 PR]

Walnuts Grown in California; Stays of Reserve Obligation and Its Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Walnut Board (Board) to stay the reserve obligation and its requirements currently prescribed under the Federal marketing order for walnuts grown in California. The proposed rule would also make conforming changes to remove references to the reserve obligation and its requirements.

DATES: Comments must be received by February 21, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Regional Director,

California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5905, Fax: (559) 487-5906; or Email: Terry.Vawter@usda.gov.

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Board locally administers the Order and is comprised of growers and handlers of walnuts operating within California, and a public member.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any

obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would stay the regulations related to reserve walnuts under the Order. Section 984.89(b)(2) states that the Secretary of Agriculture (Secretary) "may terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act." The current authority to establish a reserve obligation has not been used by the Board since the 1987-88 marketing year, when the Board began working toward increasing demand rather than controlling supply.

Section 984.21 defines "handler inventory" as "all walnuts, inshell or shelled (except those held in satisfaction of a reserve obligation), wherever located, then held by a handler or for his or her account."

Sections 984.23 and 984.26 define "free" and "reserve" walnuts, respectively; and § 984.33 defines "hold," the action that requires handlers to maintain possession of the kernelweight of walnuts necessary to meet his or her reserve obligation.

The reserve obligation requirements in §§ 984.48 and 984.49 include provisions that require the Board recommend to the Secretary free, reserve, and export percentages of walnuts at the start of each marketing year (September 1). A recommendation for changes to the percentages must be made to the Secretary on or before February 15 of each marketing year, if such changes are prudent. The export percentages are reviewed by the Board's Export Committee, which is comprised of Board members who are industry experts in exporting walnuts.

Sections 984.49, 984.50, 984.51, 984.54, 984.56, 984.64, 984.66, 984.67, and 984.69 include establishing a free, reserve, and export percentage

obligation; establishing minimum kernel content for any lot of walnuts acceptable for disposition for credit against a handler's reserve obligation; mandating inspection of walnuts; establishing the reserve obligation; instructions regarding the disposition of reserve and substandard walnuts; a requirement that the Board assist handlers in meeting their reserve obligation; various exemptions from the reserve obligation; and authorizing the Board to use funds derived from assessments to defray expenses related to reserve walnut pool expenses, respectively.

Sections 984.450, 984.456, and 984.464 establish requirements relative to grade and size, inspection, and disposition of reserve walnuts, respectively.

This proposed suspension is expected to streamline Board operations by eliminating the need for the Export Committee and removing the need for the Board to consider free, reserve, and export percentages at its meetings at the start of each marketing year.

The reserve obligation and its requirements would be suspended but remain part of the Order until the Board makes a recommendation to reinstate or terminate them. This proposed rule would also remove related references to the reserved obligation and its requirements. The Secretary would review any such recommendation by the Board.

This proposed rule would stay §§ 984.23, 984.26, 984.33, 984.49, 984.54, 984.56, 984.66, and 984.456 in their entirety.

This proposed rule would amend §§ 984.21, 984.48, 984.50, 984.51, 984.64, 984.69, 984.450, 984.451, and 984.464 to remove references to the reserve obligation and its requirements.

This proposed stay requires no changes to any existing Board forms.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 90 handlers subject to regulation under the Order and approximately 5,000 walnut growers in the production area. The Small Business Administration (SBA) defines small agricultural service firms as those having annual receipts of less than \$30,000,000, and small agricultural producers as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

Based upon information from the National Agricultural Statistics Service (NASS), the price reported for July 2019 was \$7,060 per ton (\$3.53 per pound) of walnuts. Data from NASS indicate that the average walnut production is 1.93 tons per acre. Given that volume and price, a grower would have to farm at least 74 acres to receive \$1,000,000, not accounting for input costs. NASS data on farm size indicate that only approximately 42 percent of walnut growers farm more than 74 acres. Thus, most walnut growers may be considered small entities.

Given data from the Board regarding walnut receipts by handlers, including walnut acquisitions and the \$7,060 per ton price, only 38 percent of handlers would have annual receipts of \$30,000,000. Thus, most walnut handlers may be considered small entities.

This proposed stay is expected to positively impact the Board, including members of the Export Committee, by staying regulations that have not been used in decades. No longer having to gather data, discuss the information, and then make recommendations to the Secretary regarding a reserve obligation would allow the Board's meeting early in the marketing year to run more efficiently.

This proposed rule would stay the reserve obligation and its requirements under the Order for the 2019–20 marketing year and beyond, until the Board recommends to the Secretary that the requirements be reinstated or terminated. The proposed rule would also remove related references to the reserve obligation and its requirements in the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements are approved by the Office of Management and Budget (OMB) under OMB No. 0581–0178 Vegetable and Specialty Crops. No changes to those requirements are necessary as a result of this action.

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

access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Board held a strategic planning session on February 12–13, 2019, and thoroughly discussed this action. The Marketing Order Review Committee (MORC) of the Board met on August 14, 2019, to further discuss the reserve obligation and its requirements and made a recommendation for the change at the Board's September 13, 2019 meeting. The strategic planning sessions, the MORC meeting, and the Board meeting on September 13, 2019, were public meetings widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations.

Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

This proposed rule invites comments on staying the reserve authority under the Order. Any comments received will be considered prior to the finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this proposed rule, as hereinafter set forth, would tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

- 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 984.21 [Amended]

- 2. Revise § 984.21 to read as follows:

Handler inventory as of any date means all walnuts, inshell or shelled, wherever located, then held by a handler or for his or her account.

§ 984.23 [Stayed]

■ 3. Section 984.23 is stayed indefinitely.

§ 984.26 [Stayed]

■ 4. Section § 984.26 is stayed indefinitely.

§ 984.33 [Stayed]

■ 5. Section § 984.33 is stayed indefinitely.

§ 984.48 [Amended]

■ 6. In § 984.48, paragraphs (a)(6) and (7) are stayed indefinitely.

§ 984.49 [Stayed]

■ 7. Section § 984.49 is stayed indefinitely.

§ 984.50 [Amended]

■ 12. In § 984.50, paragraph (e) is stayed indefinitely.

■ 13. In § 984.51, revise paragraphs (a) and (c) to read as follows:

§ 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts, each handler at his or her own expense shall cause such walnuts to be inspected to determine whether they meet the then-applicable grade and size regulations. Such inspection shall be performed by the inspection service or services designated by the Board with the approval of the Secretary; Provided, That if more than one inspection service is designated, the functions performed by each services shall be separate, and shall not duplicate each other. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts, the grade and size of such walnuts as set forth in the United States Standards for Walnuts (*Juglans regia*) in the Shell. The Board, with the approval of the Secretary, may prescribe procedures for the administration of this provision.

* * * * *

(c) Upon inspection, walnuts shall be identified by tags, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or of a designated inspector and such identification shall not be altered or removed except as directed by the Board. The assessment requirements

in § 984.69 shall be incurred at the time of certification.

§ 984.54 [Stayed]

■ 14. Section 984.54 is stayed indefinitely.

§ 984.56 [Stayed]

■ 15. Section 984.56 is stayed indefinitely.

■ 16. Revise § 984.64 to read as follows:

§ 984.64 Disposition of substandard walnuts.

Substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or such other uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of:

(a) His production and holdings of substandard walnuts and; (b) The disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

§ 984.66 [Stayed]

■ 17. Section 984.66 is stayed indefinitely.

■ 18. Amend § 984.67 by:

■ a. Stay paragraph (a) indefinitely, and;

■ b. Revise paragraph (b)(1) to read as follows:

§ 984.67 Exemptions.

* * * * *

(b) * * *

(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

* * * * *

§ 984.69 [Amended]

■ 19. In § 984.69 paragraph (b) is stayed indefinitely.

§ 984.450 [Amended]

■ 20. In § 984.450 paragraphs (a) and (b) are stayed indefinitely.

§ 984.451 [Amended]

■ 21. In § 984.451 paragraph (c) is stayed indefinitely.

§ 984.456 [Stayed]

■ 22. Section 984.456 is stayed indefinitely.

§ 984.464 [Amended]

■ 23. In § 984.464 paragraph (a) is stayed indefinitely.

Dated: January 9, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020-00399 Filed 1-21-20; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-1076; Product Identifier 2019-NM-173-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., 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 Bombardier, Inc., Model BD-100-1A10 airplanes. This proposed AD was prompted by a report of an in-flight event where a flightcrew observed a SPOILER FAIL message and had difficulty maintaining roll control of the airplane. This proposed AD would require revising the existing airplane flight manual (AFM) to provide the flightcrew with procedures related to roll spoiler failures that reduce the flightcrew workload during this type of failure scenario. 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 9, 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 Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1-866-538-1247 or direct-dial telephone 1-514-855-2999; email ac.yul@aero.bombardier.com; internet <https://www.bombardier.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2019-1076; 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: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email 9-avs-nyaco-cos@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-2019-1076; Product Identifier 2019-NM-173-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 NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF-2019-29, dated August 12, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Bombardier, Inc., Model BD-100-1A10 airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2019-1076.

This proposed AD was prompted by a report of an in-flight event where a flightcrew observed a SPOILER FAIL message and had difficulty maintaining roll control of the airplane. The FAA is proposing this AD to address uncommanded deployment of the multi-function spoiler at certain positions, which in combination with specific flap positions and airspeeds, could create an unacceptably high flightcrew workload in maintaining roll control of the airplane and could possibly lead to loss of controllability of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Bombardier Challenger 300, Airplane Flight Manual,

Publication No. CSP 100-1, Revision 56, dated July 8, 2019; and Bombardier Challenger 350, Airplane Flight Manual, Publication No. CH 350 AFM, Revision 22, dated July 8, 2019. This service information describes procedures for “Flight Controls” in the Non-Normal Procedures section of the applicable AFM. These documents are distinct since they apply to different airplane serial numbers.

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

FAA’s Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information 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 on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing AFM to incorporate procedures for “Flight Controls” in the Non-Normal Procedures section of the applicable AFM as described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 577 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 |
|--|------------|------------------|------------------------|
| 1 work-hour × \$85 per hour = \$85 | \$0 | \$85 | \$49,045 |

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):

Bombardier, Inc.: Docket No. FAA-2019-1076; Product Identifier 2019-NM-173-AD.

(a) Comments Due Date

The FAA must receive comments by March 9, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD-100-1A10 airplanes, certificated in any category, serial numbers 20003 through 20788 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report of an in-flight event where a flightcrew observed a SPOILER FAIL message and had difficulty maintaining roll control of the airplane. The FAA is issuing this AD to address uncommanded deployment of the multi-function spoiler at certain positions, which in combination with specific flap positions and airspeeds, could create an unacceptably high flightcrew workload in maintaining roll control of the airplane and could possibly lead to loss of controllability of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revisions

Within 30 days after the effective date of this AD: Revise the Non-Normal Procedures section of the existing AFM to incorporate the information in Section 05-23, “Flight Controls” of the applicable AFM specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – Airplane flight manual

| Airplane Serial Numbers | AFM | AFM Revision Number | AFM Revision Date |
|-------------------------------|---|---------------------|-------------------|
| 20003 through 20500 inclusive | Bombardier Challenger 300 AFM, Publication No. CSP 100-1 | 56 | July 8, 2019 |
| 20501 through 20788 inclusive | Bombardier Challenger 350 AFM, Publication No. CH 350 AFM | 22 | July 8, 2019 |

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New

York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF-2019-29, dated August 12, 2019, for related information. This MCAI may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2019-1076.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410,

Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email 9-avs-nyacos@faa.gov.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1-866-538-1247 or direct-dial telephone 1-514-855-2999; email ac.yul@aero.bombardier.com; internet <https://www.bombardier.com>. You may view this 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 13, 2020.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020-00913 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2019-0674; FRL-10004-37-Region 2]

Approval and Promulgation of Implementation Plans; New Jersey; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey for purposes of making a negative declaration regarding the October 2016 Oil and Natural Gas Control Techniques Guidelines (2016 Oil and Gas CTG). This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before February 21, 2020.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2019-0674 at <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Omar Hammad, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866, at (212) 637-3347, or by email at hammad.omar@epa.gov.

SUPPLEMENTARY INFORMATION: The Supplementary Information section is arranged as follows:

Table of Contents

- I. What action is the EPA proposing?
- II. What is the background for this proposed rulemaking?
- III. What did New Jersey submit?
- IV. What is the EPA's evaluation of New Jersey's SIP submittal?
- V. Statutory and Executive Order Reviews

I. What action is the EPA proposing?

The EPA is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the State of New Jersey on May 13, 2019, for purposes of making a negative declaration that no sources exist in the State of New Jersey that would be subject to the 2016 Oil and Gas CTG.

II. What is the background for this proposed rulemaking?

On October 27, 2016, EPA published in the **Federal Register** the "Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry." See 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compounds (VOC) emissions from select oil and natural gas industry emission sources. Clean Air Act (CAA) section 182(b)(2)(A) requires that for ozone nonattainment areas classified as Moderate, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. CAA section 184(b)(1)(B) extends this requirement to states in the Ozone Transport Region (OTR). States are required to adopt RACT controls that are at least as stringent as those found within the CTG.

III. What did New Jersey submit?

On May 13, 2019, the New Jersey Department of Environmental Protection (NJDEP) submitted to the EPA a SIP revision consisting of a negative declaration for the 2016 Oil and Gas CTG.

The oil and natural gas industry includes oil and natural gas operations involved in the extraction and production of crude oil and natural gas, as well as the processing, transmission, storage, and distribution of natural gas. For oil, the industry includes all operations from the well to the point of custody transfer at a petroleum refinery. For natural gas, the industry includes all operations from the well to the customer.

The NJDEP cross referenced the source operations covered in the 2016 Oil and Gas CTG and its applicability to New Jersey. Its findings are in the table below.

TABLE 1—NEW JERSEY'S EVALUATION OF THE SOURCE OPERATIONS COVERED IN THE 2016 OIL AND GAS CTG AND ITS APPLICABILITY TO NEW JERSEY

| Source operations covered in the 2016 Oil and Gas CTG | Applicability | Confirmation no source operations in NJ |
|---|--|--|
| Storage Vessels (CTG Section 4.0). | Crude oil, condensate, intermediate hydrocarbon liquids, and produced water storage in all segments (except distribution) of the oil and gas industry. | Only distribution of oil in the state; CTG specifically excludes storage of crude oil at refineries. |
| Compressors (CTG Section 5.0). | Centrifugal and reciprocating compressors located between the wellhead and point of custody transfer to the natural gas transmission and storage. | No natural gas extraction occurs in state; only natural gas transmission and storage after natural gas has entered state through pipeline. |

TABLE 1—NEW JERSEY'S EVALUATION OF THE SOURCE OPERATIONS COVERED IN THE 2016 OIL AND GAS CTG AND ITS APPLICABILITY TO NEW JERSEY—Continued

| Source operations covered in the 2016 Oil and Gas CTG | Applicability | Confirmation no source operations in NJ |
|---|---|--|
| Pneumatic Controller (CTG Section 6.0). | Controllers located from wellhead to a natural gas processing plant or from wellhead to point of custody transfer to an oil pipeline. | No natural gas or oil extraction occurs in state; and no natural gas processing plant operates in state. |
| Pneumatic Pumps (CTG Section 7.0). | Pumps located at natural gas processing plants and well sites. | No natural gas extraction occurs in state; and no natural gas processing plant operates in state. |
| Equipment Leaks (CTG Section 8.0). | All equipment (except compressors and sampling connection systems) within a process unit located at a natural gas processing plant in VOC service or in wet gas service. | No natural gas processing plant operates in state; and no wet gas service. |
| Fugitive Emissions (CTG Section 9.0). | Collection of fugitive emission components at a well site and gathering and boosting station, that is located from the wellhead to the point of custody transfer to the natural gas transmission and storage segment or to an oil pipeline. | No natural gas extraction occurs in state; only natural gas transmission and storage after natural gas has entered state through pipeline. |

Through this negative declaration, New Jersey is asserting that there are no sources within its respective State that would be subject to the 2016 Oil and Gas CTG. New Jersey asserts that it is not anticipated that crude oil or natural gas extraction will be occurring in New Jersey for the foreseeable future.

IV. What is the EPA's evaluation of New Jersey's SIP submittal?

On May 13, 2019, New Jersey submitted a SIP revision to make a negative declaration and address the 2016 Oil and Gas CTG requirements within the State. The EPA has reviewed New Jersey's submittal and agrees with the State's evaluation. The EPA compared the State's evaluation with their inventory and is concurring with their negative declaration. The EPA is proposing to approve the revision to the SIP submitted by the State to address the 2016 Oil and Gas CTG for the OTR and nonattainment RACT requirements for both the 2008 and 2015 ozone National Ambient Air Quality Standards and is approving their negative declaration that no sources exist in the State of New Jersey that would be subject to the 2016 Oil and Gas CTG.

The EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before the EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments as discussed in the **ADDRESSES** section of this rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993), and 13563 (76 FR 382, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempt 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 CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action, pertaining to New Jersey's Negative Declaration SIP submission, would not be approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose any 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: January 2, 2020.

Peter D. Lopez,

Regional Administrator, Region 2.

[FR Doc. 2020-00778 Filed 1-21-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2015-0463; FRL-10003-90-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take action pursuant to section 110 of the Clean Air Act (CAA or Act) on State Implementation Plan (SIP) revisions submitted by the State of Utah on July 3, 2019, as supplemented on December 3, 2019, to satisfy certain regional haze requirements for the program's first implementation period. The EPA is proposing to approve the July 2019 SIP revision that provides an alternative to best available retrofit technology (BART) controls for nitrogen oxides (NO_x) at the PacifiCorp Hunter and Huntington power plants. The EPA proposes to find that the Utah NO_x BART Alternative for Hunter and Huntington would provide greater reasonable progress toward natural visibility conditions than BART, in accordance with the requirements of the CAA and the EPA's Regional Haze Rule (RHR). In conjunction with this proposed approval, we propose to withdraw the federal implementation plan (FIP) that addresses NO_x BART for the Hunter and Huntington power plants. The EPA also proposes to approve the December 3, 2019 SIP supplement that would require reporting of all deviations from compliance with the applicable requirements under BART and the BART Alternative, including the emission limits for Hunter and Huntington.

DATES:

Comments: Written comments must be received on or before March 23, 2020.

Public Hearing: A public hearing for this proposal is scheduled to be held on Wednesday, February 12, 2020, in Price, Utah from 1 p.m. until 5 p.m., and again from 6 p.m. until 8 p.m. mountain standard time (MST). See the

SUPPLEMENTARY INFORMATION section below for the venue address.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2015-0463, to the Federal Rulemaking Portal: [https://](https://www.regulations.gov)

www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Aaron Worstell, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6073, worstell.aaron@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Hearing

A public hearing will be held at the Jennifer Leavitt Student Center (JLSC),¹ Utah State University Eastern, 400 North 410 East, Price, UT 84501, on Wednesday, February 12, 2020. The

¹ See <https://usueastern.edu/about/map/documents/PriceCampusMap.pdf> for a detailed campus map.

hearing will convene at 1 p.m. and run from 1 p.m. until 5 p.m., and again from 6 p.m. until 8 p.m. (MST). Persons wishing to preregister may be assigned a time according to this schedule. Please register at <https://utah-regional-haze-2020.eventbrite.com> to speak at the hearing. The last day to preregister in advance to speak at the hearing is February 3, 2020. Additionally, requests to speak may be taken the day of the hearing at the hearing registration desk on a first come first serve basis, as time allows. The EPA will make every effort to accommodate all walk-in speakers, however we highly encourage the public to preregister for the hearing in order to be guaranteed speaking time. For questions regarding the public hearing, please contact Clayton Bean at bean.clayton@epa.gov or (303) 312-6143.

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. The hearing officer may limit the time available for each commenter to address the proposal to 5 minutes or less if the hearing officer determines it to be appropriate. The limitation is to ensure that everyone who wants to make a comment has the opportunity to do so. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearings. Verbatim transcripts, in English, of the hearings and written statements will be included in the rulemaking docket.

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. What action is the EPA proposing?

On July 5, 2016, the EPA promulgated a final rule titled "Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Partial Approval and Partial Disapproval of Air Quality Implementation Plans and Federal Implementation Plan; Utah; Revisions to Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze," which approved, in part, a regional haze SIP revision submitted by the State of Utah on June 4, 2015.² In the July 2016 final rule, the EPA also disapproved, in part, the Utah regional haze SIP submission, including the NO_x BART Alternative (also "BART Alternative" or "Alternative") for Hunter Units 1 and 2 and Huntington Units 1 and 2, which are BART units as explained in more detail below. The BART Alternative relied on sulfur dioxide (SO₂), NO_x, and particulate matter (PM) emission reductions stemming from the 2015 closure of PacifiCorp's Carbon power plant, as well as NO_x reductions achieved through combustion control upgrades at Hunter Units 1, 2, and 3 and Huntington Units 1 and 2. (Hunter Unit 3 is not a BART unit.) The combustion control upgrades for Hunter Units 1 and 2 and Huntington Units 1 and 2 include an Alstom TSF 2000™ low-NO_x firing system and two elevations of separated overfire air (SOFA). The combustion

upgrades for Hunter Unit 3 include upgraded low-NO_x burners (LNB) and overfire air (OFA). Concurrent with disapproving the NO_x BART Alternative, EPA promulgated a FIP in the July 2016 final rule that imposed a NO_x BART emission limit of 0.07 lb/MMBtu (30-day rolling average) for each of the four BART units based on the emission reductions achievable through the installation and operation of selective-catalytic reduction (SCR) plus upgraded combustion controls.

On July 3, 2019, Utah submitted a revised SIP that, based on new technical information and a different regulatory test, seeks to demonstrate that the previously submitted NO_x BART Alternative achieves greater reasonable progress than BART. The SIP revision also includes amendments to Utah's SO₂ milestone reporting requirements under the SO₂ Backstop Trading Program pursuant to 40 CFR 51.309 so that SO₂ emission reductions resulting from the closure of the Carbon plant are not counted under both the SO₂ Backstop Trading Program and the NO_x BART Alternative. The EPA is proposing to approve the State's July 3, 2019 SIP revision based on this new information and to incorporate the following into Utah's SIP:

- A NO_x emission limit of 0.26 lb/MMBtu (30-day rolling average) each for Hunter Units 1 and 2 and Huntington 1 and 2.
- A NO_x emission limit of 0.34 lb/MMBtu (30-day rolling average) for Hunter Unit 3.
- A requirement to permanently close and cease operation of the Carbon power plant by August 15, 2015.
- The associated amendments to the SO₂ milestone reporting requirements.

Because approval of the NO_x BART Alternative would satisfy Utah's BART obligation for Hunter Units 1 and 2 and Huntington Units 1 and 2, we are also proposing to withdraw the FIP for NO_x BART at these units.

The EPA is also proposing to approve a December 3, 2019 SIP supplement to the July 3, 2019 SIP revision that includes monitoring, recordkeeping and reporting (MRR) requirements for the units subject to the NO_x BART Alternative and PM BART. The supplement also includes amendments that require each source to submit a report of any deviation from applicable emission limits and operating practices, including deviations attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken.

Finally, contingent on our approval of these two SIP revisions, we propose to find that Utah's SIP fully satisfies the

² 81 FR 43894 (July 5, 2016).

requirements of section 309 of the RHR and, therefore, that the State has fully complied with the requirements for reasonable progress, including BART, for the first implementation period.

EPA is requesting comment on its proposed approval of Utah's regional haze SIP elements related to the NO_x BART Alternative under 40 CFR 51.309(d)(4)(vii) and 51.308(e)(2)–(3), as well as the MRR elements for the units subject to that BART Alternative and to PM BART. EPA previously approved Utah's regional haze SIP as meeting all other requirements of 40 CFR 51.309,³ and we are neither reopening nor requesting comment on previously approved elements here.

II. Background

A. Requirements of the Clean Air Act and the EPA's Regional Haze Rule

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes "as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution."⁴ Section 169A directs the EPA to establish regulations for states to submit SIPs to make "reasonable progress" toward the national visibility goal through long-term strategies and to implement BART at certain BART-eligible sources. Recognizing the complexity of addressing visibility impacts, Congress enacted section 169B in the 1990 Amendments to the CAA, which, among other things, dedicated greater resources to "regional haze" and the problem of visibility impairment due to pollution

³ See 77 FR 74355 (Dec. 14, 2012); 81 FR 43894 (July 5, 2016).

⁴ 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas whose visibility they consider to be an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this section, we mean a "mandatory Class I Federal area." The list of mandatory Class I Federal areas is located in 40 CFR part 81 subpart D.

transport over large distances. Section 169B provided for the creation of "visibility transport" regions and commissions, and specifically directed the establishment of a Grand Canyon visibility transport commission at section 169B(f).

The EPA promulgated a rule to address regional haze on July 1, 1999.⁵ This RHR revised the existing visibility regulations⁶ to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 40 CFR 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300 through 40 CFR 51.309. As discussed in more detail below, section 309 is available to certain western states, including Utah, in lieu of certain requirements in section 308. The EPA revised the RHR most recently on January 10, 2017.⁷

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.⁸ Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas, which, for the first implementation period, includes satisfying the BART requirements. A state must submit its SIP and SIP revisions to the EPA for approval. EPA reviews SIP submissions against the requirements of the CAA and applicable regulations. If EPA finds that a state has failed to make a required submission or that a submission does not satisfy the minimum criteria for completeness, or if EPA disapproves a SIP submission in whole or in part, EPA is required to promulgate a FIP within two years of such finding or disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such FIP.⁹ Once approved, a SIP is enforceable by the EPA and citizens under the CAA; that is, the SIP is federally enforceable.

B. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states as part of their SIPs, or the EPA

⁵ 64 FR 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

⁶ The EPA had previously promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, *i.e.*, reasonably attributable visibility impairment (RAVI). 45 FR 80084 (December 2, 1980).

⁷ 82 FR 3078 (January 10, 2017).

⁸ 42 U.S.C. 7410(a), 7491, and 7492(a); CAA sections 110(a), 169A, and 169B.

⁹ 42 U.S.C. 7410(c)(1).

when developing a FIP in the absence of an approved regional haze SIP, to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states' implementation plans to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the "Best Available Retrofit Technology" as determined by the states through their SIPs, or as determined by the EPA when it promulgates a FIP. Under the RHR, states (or the EPA) are directed to conduct BART determinations for such "BART-eligible" sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.¹⁰ Sources that are determined to cause or contribute to such impairment pursuant to the BART Guidelines are referred to as "subject-to-BART" sources and must undergo a BART determination applying the five BART factors.¹¹ Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program for their subject-to-BART sources, so long as the alternative provides greater reasonable progress towards improving visibility than BART (sometimes referred to as the "better-than-BART" test).¹²

C. BART Alternatives

States opting to submit an alternative program in lieu of source-specific BART, whether for a SIP submitted under 40 CFR 51.308 or 51.309,¹³ must meet requirements under 40 CFR 51.308(e)(2) and, if applicable, (e)(3). These requirements for alternative programs relate to the "better-than-BART" test and fundamental elements of any alternative program.

In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific

¹⁰ 40 CFR 51.308(e). The EPA designed the Guidelines for BART Determinations Under the RHR (Guidelines), 40 CFR part 51, Appendix Y, "to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source." Guidelines, Section I.A. Section II of the Guidelines describes the four steps to identify BART sources, and Section III explains how to identify BART sources (*i.e.*, sources that are "subject to BART").

¹¹ CAA section 169A(g)(2); 40 CFR 51.308(e)(1)(ii)(A).

¹² 40 CFR 51.308(e)(2); *WildEarth Guardians v. EPA*, 770 F.3d 919 (10th Cir. 2014).

¹³ See 40 CFR 51.309(d)(4).

BART, a state, or the EPA if developing a FIP, must demonstrate that its SIP meets the requirements, as applicable, in 40 CFR 51.308(e)(2)(i) through (vi). Among other things, the state or the EPA must conduct an analysis of the best system of continuous emission control technology available and the associated emission reductions achievable for each source subject to BART covered by the alternative program, termed a “BART benchmark.” Where the alternative program has been designed to meet requirements other than BART, simplifying assumptions may be used to establish a BART benchmark. The BART benchmark is the basis for comparison in the “better-than-BART” test for BART alternatives.

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the state or the EPA must provide a determination that the alternative program achieves greater reasonable progress than BART under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence. 40 CFR 51.308(e)(3), in turn, provides specific tests applicable under specific circumstances for determining whether the alternative achieves greater reasonable progress than BART. If the distribution of emissions under the alternative program is not substantially different than for BART, and the alternative program results in greater emissions reductions of each relevant pollutant than BART, then the alternative program may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, the differences in visibility improvement between BART and the alternative program must be determined by conducting dispersion modeling for each impacted Class I area for the best and worst 20 percent of days. This modeling demonstrates “greater reasonable progress” if both of the two following criteria are met: (1) Visibility does not decline in any Class I area; and (2) there is overall improvement in visibility when comparing the average differences between BART and the alternative program across all the affected Class I areas.

Alternately, pursuant to 40 CFR 51.308(e)(2)(i)(E), a third test is available under which States may show that the BART alternative achieves greater reasonable progress than BART “based on the clear weight of evidence.” As stated in in the EPA’s revisions to the RHR governing alternative to source-specific BART determinations, such demonstrations

attempt to make use of all available information and data which can inform a

decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible. Factors which can be used in a weight of evidence determination in this context may include, but not be limited to, future projected emissions levels under the program as compared to under BART, future projected visibility conditions under the two scenarios, the geographic distribution of sources likely to reduce or increase emissions under the program as compared to BART sources, monitoring data and emissions inventories, and sensitivity analyses of any models used. This array of information and other relevant data may be of sufficient quality to inform the comparison of visibility impacts between BART and the alternative program. In showing that an alternative program is better than BART and when there is confidence that the difference in visibility impacts between BART and the alternative scenarios are expected to be large enough, a weight of evidence comparison may be warranted in making the comparison. The EPA will carefully consider the evidence before us in evaluating any SIPs submitted by States employing such an approach.¹⁴

Under 40 CFR 51.308(e)(2)(iii) and (iv), all emission reductions for the alternative program must take place during the period of the first long-term strategy for regional haze, and all the emission reductions resulting from the alternative program must be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. Pursuant to 40 CFR 51.309(e)(2)(v), states have the option of including a provision that the emissions trading program or other alternative measure include a geographic enhancement to the program to address the requirement under 40 CFR 51.302(c) related to BART for RAVI from the pollutants covered under the emissions trading program or other alternative measure.

A SIP or FIP addressing regional haze must include emission limits and compliance schedules for each visibility-impairing pollutant emitted from each source subject to BART. In addition to the RHR’s requirements, general SIP requirements mandate that the SIP or FIP include all regulatory requirements related to MRR needed to make emission limits practically enforceable.¹⁵

D. Requirements for Regional Haze SIPs Submitted Under 40 CFR 51.309

EPA’s RHR provides two paths to address regional haze for the first implementation period of the regional haze program. One is through 40 CFR 51.308, requiring, among other things, SIPs to include source-specific BART

determinations or BART alternatives, and to contain long-term strategies that include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve reasonable progress in Class I areas inside the state and in Class I areas outside the state that may be affected by emissions from the state. In addition to these requirements, each regional haze SIP or FIP under section 308 must contain measures as necessary to make reasonable progress towards the national visibility goal.¹⁶ The other method for addressing regional haze for the first implementation period is through 40 CFR 51.309, which provides an option for nine states termed the “Transport Region States”: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming. Among other things, by meeting the requirements under 40 CFR 51.309, these states can be deemed to be making reasonable progress toward the national goal of achieving natural visibility conditions for the 16 Class I areas on the Colorado Plateau.¹⁷

Section 309 requires those Transport Region States that choose to participate to adopt regional haze strategies that are based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) established under CAA 169B(f) for protecting the 16 Class I areas on the Colorado Plateau. The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around the 16 Class I areas on the Colorado Plateau and provided policy recommendations to the EPA to address such impacts. The GCVTC determined that all Transport Region States could potentially impact the Class I areas on the Colorado Plateau. The GCVTC submitted a report to the EPA in 1996 containing recommendations for protecting visibility for the Class I areas on the Colorado Plateau, and the EPA codified these recommendations in section 309 as an option available to states as part of the RHR.¹⁸

The EPA determined that the GCVTC strategies would provide for reasonable progress in mitigating regional haze if supplemented by an annex containing quantitative emission reduction milestones and provisions for a trading program or other alternative measure for SO₂.¹⁹ In September 2000, the Western Regional Air Partnership (WRAP), which is the successor organization to the GCVTC, submitted an annex to EPA.

¹⁶ 40 CFR 51.308(d), (f).

¹⁷ 40 CFR 51.309(a).

¹⁸ 64 FR 35714, 35749 (July 1, 1999).

¹⁹ 64 FR 35714, 35749, 35756 (July 1, 1999).

¹⁴ 71 FR 60612, 60622 (Oct. 13, 2006).

¹⁵ CAA section 110(a); 40 CFR part 51, subpart K; 40 CFR part 51, appendix V.

The annex contained SO₂ emissions reduction milestones and detailed provisions of a backstop trading program to be implemented automatically if voluntary measures failed to achieve the SO₂ milestones (the SO₂ Backstop Trading Program). The EPA codified the annex on June 5, 2003 at 40 CFR 51.309(h).²⁰

Five western states, including Utah, submitted implementation plans under section 309 in 2003.²¹ However, the EPA was challenged by the Center for Energy and Economic Development (CEED) on the validity of the annex provisions contained in section 309(h). In *CEED v. EPA*, the D.C. Circuit Court of Appeals vacated the EPA approval of the WRAP annex.²² In response to the court's decision, the EPA removed the annex requirements from 40 CFR 51.309(h), but incorporated the provisions allowing for an SO₂ Backstop Trading Program under the stationary source requirements in 40 CFR 51.309(d)(4).²³ The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading, and allow states to adopt alternatives to source-specific application of BART.

Under 40 CFR 51.309, states can satisfy the SO₂ BART requirements by adopting SO₂ emissions milestones and the SO₂ Backstop Trading Program as described in 51.309(d)(4)(i)–(vi). Under this approach, states must establish declining SO₂ emissions milestones for each year of the program through 2018. The milestones must be consistent with the GCVTC's goal of 50 to 70 percent reduction in SO₂ emissions by 2040. The SO₂ Backstop Trading Program would be implemented if a milestone is exceeded and the program is triggered.²⁴

Section 51.309(d)(4) includes not only provisions for stationary source emissions of SO₂, but also a requirement that Transport Region States' implementation plans contain any necessary long-term strategies and BART requirements for stationary source PM and NO_x emissions. Pursuant to 40 CFR 51.309(d)(4)(vii), any BART provisions may be submitted pursuant to either 51.308(e)(1) or 51.308(e)(2); that is, states may submit either source-specific BART

determinations or BART alternatives for PM and NO_x.

E. Monitoring, Recordkeeping and Reporting

The CAA requires that SIPs, including regional haze SIPs, contain elements sufficient to ensure emission limits are practically enforceable. CAA section 110(a)(2) states that the MRR provisions of states' SIPs must:

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter; . . . (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter; . . . (F) require, as may be prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in it, including “[p]eriodic testing and inspection of stationary sources,”²⁵ and “legally enforceable procedures” for recordkeeping and reporting.²⁶ Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels”; and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”

F. Consultation With Federal Land Managers (FLMs)

The statute and the RHR require that a state, or the EPA if promulgating a FIP that fills a gap in the SIP with respect

to the applicable requirements, consult with FLMs before adopting and submitting a required SIP or SIP revision, or a required FIP or FIP revision.²⁷ Further, the state when considering a SIP revision (or EPA in a FIP) must include in its proposal a description of how it addressed any comments provided by the FLMs.

G. Summary of State Regional Haze Submittals and EPA Actions

1. 2008 and 2011 Utah Regional Haze SIP Submissions

On May 26, 2011, the State of Utah submitted to EPA a regional haze SIP under 40 CFR 51.309 (“2011 Utah RH SIP”). Consistent with 40 CFR 51.309(d)(4)(vii), this submittal included BART determinations for NO_x and PM at Utah's four subject-to-BART sources: PacifiCorp's Hunter Units 1 and 2 and Huntington Units 1 and 2. All four units are tangentially-fired fossil-fuel electric generating units (EGUs), each with a net generating capacity of 430 MW, permitted to burn bituminous coal. This submittal also included quantitative emissions milestones through 2018 and a backstop trading program for SO₂ intended to meet the requirements of 40 CFR 51.309(d)(4)(i)–(vi). The SO₂ backstop trading program covers Utah, Wyoming, New Mexico and the City of Albuquerque.

Utah had also previously submitted SIPs on December 12, 2003, August 8, 2004, and September 9, 2008, to meet the requirements of the RHR. These submittals were, for the most part, superseded and replaced by the May 26, 2011 submittal as further explained in the next section.

2. 2012 EPA Action on 2011 and 2008 Utah Regional Haze SIP Submissions

On December 14, 2012, EPA partially approved and partially disapproved the 2011 Utah RH SIP.²⁸ We approved the 2011 Utah RH SIP as meeting the requirements of 40 CFR 51.309, with the exception of the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to NO_x and PM BART. EPA's partial disapproval action was based on the following: (1) Utah did not take into account the five statutory factors in its BART analyses for NO_x and PM; and (2) the 2011 Utah RH SIP submission did not contain the provisions necessary to make the BART limits practically enforceable as required by section 110(a)(2) of the CAA and 40 CFR 51, appendix V.²⁹

²⁷ CAA section 169A(d); 40 CFR 51.308(i).

²⁸ 77 FR 74355, 74357 (Dec. 14, 2012).

²⁹ *Id.*

²⁰ 68 FR 33764, 33767 (June 5, 2003).

²¹ Five states—Arizona, New Mexico, Oregon, Utah and Wyoming—and Albuquerque-Bernalillo County, New Mexico, initially exercised this option by submitting plans to the EPA in December 2003. Oregon elected to cease participation in 2006, and Arizona elected to cease participation in 2010.

²² *Ctr. for Energy & Econ. Dev. v. EPA*, 398 F.3d 653, 654 (DC Cir. 2005).

²³ 71 FR 60612 (October 13, 2006).

²⁴ 40 CFR 51.309(d)(4)(v).

²⁵ 40 CFR 51.212(a).

²⁶ 40 CFR 51.211.

We also approved two sections of the 2008 Utah RH SIP submission in the December 13, 2012 action. Specifically, we approved state rules UAR R307–250—Western Backstop Sulfur Dioxide Trading Program and R307–150—Emission Inventories. We took no action on the rest of the 2008 submittal as the 2011 submittal superseded and replaced all other sections. We also took no action on the December 12, 2003 and August 8, 2004 submittals as these were superseded by the 2011 submittal.

On November 8, 2011, we separately proposed approval of Section G—Long-Term Strategy for Fire Programs of the May 26, 2011 submittal and finalized our approval of that action on January 18, 2013.³⁰

3. Petitions for Review of the EPA’s Approval of the SO₂ Backstop Trading Program

In 2013, conservation organizations challenged EPA’s 2012 approval of the SO₂ Backstop Trading Program as an alternative to BART for certain Transport Region States, including Utah, in the U.S. Court of Appeals for the Tenth Circuit. On October 21, 2014, the Tenth Circuit upheld EPA’s action, including EPA’s finding that the trading program could serve as a BART alternative under a “clear weight of evidence” standard.³¹

4. 2015 Utah Regional Haze SIP Submissions

On June 4, 2015, the State of Utah submitted to EPA a revision to its Regional Haze SIP under 40 CFR 51.309 of the RHR (“June 2015 Utah RH SIP”) to address the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to NO_x and PM BART. Utah developed the June 2015 Utah RH SIP in response to EPA’s December 14, 2012 partial disapproval of the 2011 Utah RH SIP submission. The June 2015 Utah RH SIP evolved from a draft SIP on which Utah sought public comment in October 2014. After receiving extensive public comments on that draft, Utah decided to pursue a NO_x BART Alternative under the 40 CFR 51.308(e)(2) “clear weight of evidence” standard that takes credit for NO_x reductions due to combustion controls installed at PacifiCorp’s Hunter and Huntington power plants in addition to NO_x, SO₂, and PM reductions from the August 2015 retirement of PacifiCorp’s nearby Carbon power plant. The June 2015 Utah RH SIP submission also included measures to make the SIP requirements

practically enforceable and included additional information pertaining to the PM BART determinations for Hunter and Huntington to address deficiencies identified by EPA in our December 2012 partial disapproval.

On October 20, 2015, Utah submitted to EPA another revision to its Regional Haze SIP under 40 CFR 51.309 (“October 2015 Utah RH SIP”). This SIP included an enforceable commitment to provide an additional SIP revision by mid-March 2018 to address concerns raised in public comments that the State would be double counting certain SO₂ emissions reductions under both the Utah NO_x BART Alternative and the milestone reporting for the SO₂ Backstop Trading Program.

5. 2016 EPA Action on 2015 Utah RH SIP Submissions

On July 5, 2016, we partially approved and partially disapproved the revisions to the Utah SIP submitted by the State of Utah on June 4, 2015.³² We approved the following elements of the State’s SIP submittals:³³

- BART determinations and emission limits for PM at Hunter Units 1 and 2 and Huntington Units 1 and 2.

- MRR requirements for units subject to the PM emission limits, including conditional approval of the requirement that the PM emission limits apply at all times, subject to the state’s commitment to adopt reporting requirements for deviations from the emission limits.

We disapproved these aspects of the State’s June 4, 2015 SIP:

- NO_x BART Alternative, including emission limits consistent with upgraded combustion controls at Hunter Units 1, 2, and 3 and Huntington Units 1 and 2, and the SO₂, NO_x, and PM emission reductions resulting from the shutdown of Carbon Units 1 and 2.

- MRR requirements for units subject to the NO_x BART Alternative.

As noted above, in June 2015 Utah submitted the NO_x BART Alternative under 40 CFR 51.308(e)(2)(i)(E)’s clear-weight-of-evidence test. To support its conclusion that the NO_x BART Alternative makes greater reasonable progress towards the national visibility goal, the SIP submission relied on nine metrics for comparing the Alternative to the BART Benchmark: Aggregate emission reductions, monitoring data, timing of emission reductions, energy

and non-air quality impacts, cost, and four visibility-related metrics based on the results of a modeling exercise using the CALPUFF model. In the July 2016 final rule, EPA determined that the evidence provided did not clearly demonstrate that the BART Alternative achieves greater visibility improvement than BART. As part of this evaluation, we determined which metrics were relevant to the assessment of relative visibility benefit, evaluated the strengths and weaknesses of each metric in order to determine which merited more or less weight, and collectively considered the weights assigned to the individual pieces of information in determining whether, on balance, the evidence demonstrated that the NO_x BART Alternative would clearly provide for greater reasonable progress.³⁴ Based on this assessment, we determined that the evidence before us did not satisfy the standard articulated under 40 CFR 51.308(e)(2)(i)(E) and disapproved the NO_x BART Alternative.

We thus promulgated a FIP in the July 5, 2016 action to address the deficiencies in the Utah regional haze SIP submissions. EPA’s FIP includes the following elements:

- NO_x BART determinations and corresponding emission limits for Hunter Units 1 and 2 and Huntington Units 1 and 2 of 0.07 lb/MMBtu (30-day rolling average) each, reflecting installation and operation of SCR plus the existing upgraded combustion controls.

- Monitoring, recordkeeping, and reporting requirements applicable to Hunter Units 1 and 2 and Huntington Units 1 and 2 as needed to implement the NO_x BART determinations and emission limits.

We took no action on the enforceable commitment to revise, at a minimum, SIP Section XX.D.3.c and state rule R307–150 addressing double counting of SO₂ emissions, because there was no need to do so once the NO_x BART Alternative had been disapproved.

6. Petitions for Review of EPA’s 2016 SIP Disapproval and FIP

In September 2016, the State of Utah, PacifiCorp, and several other parties challenged EPA’s July 5, 2016 disapproval of the NO_x BART Alternative and promulgation of a FIP in the U.S. Court of Appeals for the Tenth Circuit.³⁵ In addition, the State and PacifiCorp (on behalf of the co-owners of Hunter Units 1 and 2 and Huntington Units 1 and 2) submitted letters to EPA on June 30, 2017, identifying new

³² 81 FR 43894 (July 5, 2016).

³³ EPA had already approved elements satisfying other applicable requirements in the December 14, 2012 action: Section XX.B.8, Figures 1 and 2, Affected Class I Areas, pp. 8–9; Section XX.D.6.b, Table 3, BART-Eligible Sources in Utah, p. 21; Section XX.D.6.c, Sources Subject to BART, pp. 21–23.

³⁴ See 81 FR 43894, 43896–43902.

³⁵ *State of Utah v. EPA*, No. 16–9541 (10th Cir.).

³⁰ 78 FR 4071, 4072 (Jan. 18, 2013).

³¹ *WildEarth Guardians v. United States EPA*, 770 F.3d 919, 938 (10th Cir. 2014).

information that was not available at the time of EPA's action on Utah's 2015 SIP submission, providing additional explanation of existing information, and stating an intent to develop and submit to EPA additional technical analyses in support of the NO_x BART Alternative.³⁶ On July 14, 2017, the EPA Administrator sent letters to the State of Utah and PacifiCorp announcing the Agency's intent to reconsider its disapproval of the NO_x BART Alternative.³⁷ On this basis, EPA asked the Tenth Circuit to put the litigation in abeyance; on September 11, 2017, the court both granted EPA's request to abate the litigation and issued a stay of EPA's July 5, 2016 final rule.³⁸

7. 2019 Utah RH SIP Revisions

On July 3, 2019, Utah submitted a SIP revision intended to replace EPA's 2016 FIP provisions for NO_x BART. The measures in the NO_x BART Alternative submitted in July 2019 are identical to those in the Alternative submitted in June 2015 (*i.e.*, Utah submitted the same NO_x BART Alternative in the June 2015 and July 2019 SIPs). However, while the State had previously relied on the clear-weight-of-evidence test under 40 CFR 51.308(e)(2)(i)(E) to demonstrate that the Alternative achieves greater reasonable progress than BART in the June 2015 submission,³⁹ the July 2019 submission relies solely on the application of the two-prong test under 51.308(e)(3) using photochemical grid modeling. Background on these two approaches to demonstrating greater reasonable progress is provided in section II.C. above.

The July 3, 2019 SIP submittal includes the emission limitations and control measures associated with the NO_x BART Alternative. It also includes the monitoring, recordkeeping, and reporting requirements that EPA previously approved for PM BART, but disapproved as applied to the emission limitations and control measures associated with the NO_x BART Alternative.

³⁶ See docket IDs EPA-R08-OAR-2015-0463-0216 (letter from State of Utah) and EPA-R08-OAR-2015-0463-0221 (letter from PacifiCorp).

³⁷ See docket IDs EPA-R08-OAR-2015-0463-0222 (letter to State of Utah) and EPA-R08-OAR-2015-0463-0223 (letter to PacifiCorp).

³⁸ *State of Utah v. EPA*, No. 16-9541 (10th Cir.), Doc. No. 10496767.

³⁹ For a summary of the weight-of-evidence contained in Utah's June 2015 SIP, and EPA's evaluation thereof, refer to the July 2016 final rule at 81 FR 43897-43902.

On December 3, 2019, Utah submitted a supplement to the July 2019 SIP submission that includes an amendment to the monitoring, record keeping, and reporting requirements submitted on July 3, 2019. Specifically, the amendments require each source to submit a report of any deviation from applicable emission limits and operating practices, including deviations attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken.

This proposed action pertains to the July 3, 2019 SIP submittal as supplemented on December 3, 2019.

Sections 110(a)(2) and 110(l) of the CAA and 40 CFR 51.102 and appendix V to part 51 require that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to EPA. Utah, after providing notice, accepted comments on the July 2019 Utah RH SIP submission from April 1, 2019 through May 15, 2019. Similarly, Utah accepted comments on the December 3, 2019 RH SIP supplement from October 1, 2019 to October 31, 2019.

III. Utah's Regional Haze SIP Revisions

A. Summary of the Utah NO_x BART Alternative SIP Revision

As noted elsewhere, the EPA previously approved Utah's SIP elements satisfying the requirements of 40 CFR 51.309 to address the State's regional haze obligations for the first implementation period, other than emission limitations corresponding to NO_x BART or an alternative to BART for NO_x and the associated MRR requirements, and certain requirements for MRR related to PM BART.⁴⁰ Therefore, in this action we are addressing only these outstanding elements and certain ancillary SIP revisions necessary to effectuate them.

Utah's July 3, 2019 SIP RH submittal, as supplemented on December 3, 2019, includes changes to the following provisions, on which we are proposing to take action:

- Revised SIP Section XX, Regional Haze, Parts A, Executive Summary, and D, Long-Term Strategy for Stationary Sources (revised SIP narrative sections including the BART Assessment for NO_x); adopted by the Utah Air Quality Board on June 24, 2019.

⁴⁰ EPA conditionally approved Utah's MRR requirements for the PM BART emission limitations under CAA section 110(k)(4). 81 FR at 43921.

- Revised R307-110-28, General Requirements: State Implementation Plan, Regional Haze (state rule that incorporates by reference most recently amended SIP Section XX); effective August 15, 2019.

- SIP Section IX.H.21 General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements (SIP section laying out MRR requirements for control measures); adopted by the Utah Air Quality Board on November 20, 2019.

- SIP Section IX.H.22 Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology (SIP section containing emission limitations necessary for NO_x BART Alternative); adopted by the Utah Air Quality Board on November 20, 2019.

- Revised R307-110-17, General Requirements: State Implementation Plan. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits (state rule that incorporates by reference most recently amended SIP Section IX, Part H); effective on November 25, 2019.

- Revised R307-150-3, Emission Inventories, Applicability (state rule that addresses reporting of SO₂ emissions for Carbon power plant under the Western Backstop SO₂ Trading Program); effective June 25, 2018.

These six provisions are related to the following two outstanding requirements for the first implementation period: NO_x BART for Hunter Units 1 and 2 and Huntington Units 1 and 2; and MRR requirements for the Utah NO_x BART Alternative and PM BART emission limits to make the SIP requirements practically enforceable.

1. Utah NO_x BART Alternative

To satisfy the requirement of 40 CFR 51.309(d)(4)(vii), Utah has opted to establish an alternative to BART for NO_x under 40 CFR 51.308(e)(2). The State's NO_x BART Alternative consists of upgraded combustion controls on all four subject-to-BART units, upgraded combustion controls on Hunter Unit 3, and the shutdown of Carbon Units 1 and 2. The emission limits in the July 3, 2019 Utah RH SIP submittal, as supplemented on December 3, 2019, are provided in Table 1. We further explain the components of the SIP submissions below.

TABLE 1—EMISSION LIMITS AND SHUTDOWN IN THE UTAH BART ALTERNATIVE AND PM SIP ¹

| Source | Unit | PM limit ^{2,3} (lb/MMBtu, three-run test average) | NO _x limit ⁴ (lb/MMBtu, 30-day rolling average) | SO ₂ limit |
|------------------|------|--|---|------------------------------|
| Hunter | 1 | 0.015 | 0.26 | NA. |
| | 2 | 0.015 | 0.26 | NA. |
| | 3 | NA | 0.34 | NA. |
| Huntington | 1 | 0.015 | 0.26 | NA. |
| | 2 | 0.015 | 0.26 | NA. |
| Carbon | 1 | Shutdown by August 15, 2015 | Shutdown by August 15, 2015 | Shutdown by August 15, 2015. |
| | 2 | Shutdown by August 15, 2015 | Shutdown by August 15, 2015 | Shutdown by August 15, 2015. |

¹ Obtained from the July 2019 Utah RH SIP, Section IX.H.22.

² Based on annual stack testing.

³ The BART PM emission limits were previously approved by in our July 2016 final rule. 81 FR 43894 (July 5, 2016).

⁴ Based on continuous emission monitoring system (CEMS) measurement.

The State compared the NO_x BART Alternative against a BART Benchmark that consists of SCR plus upgraded combustion controls on all four BART units. The State noted SCR plus upgraded combustion controls would require careful consideration through a source-specific five-factor analysis before determining it is BART for these units. However, the State used those controls as a stringent benchmark for comparison with the NO_x BART Alternative. The State remarked that its use of SCR plus upgraded combustion controls as a benchmark is not a determination that this technology is BART; it is merely a conservative approach to evaluating the effectiveness of the alternative program. The Utah NO_x BART Alternative is generally described in SIP Section XX.D.6 with a detailed demonstration included in the *Staff Review* to support the State’s assertion that the Alternative achieves greater reasonable progress than BART.

In addition to combustion controls at the Hunter and Huntington units, the State intends to rely on the emission reductions resulting from the shutdown of a coal-fired power plant. Utah indicated that PacifiCorp shut down the Carbon Power Plant in 2015, due to the high cost to control mercury to meet the requirements of EPA’s Mercury and Air Toxics Standards (MATS).⁴¹ The State noted that the MATS rule was finalized in 2011, and the Utah RH SIP contains the requirement for the Carbon Power Plant to shut down in August 2015. The emission reductions occur after the 2002 base year for Utah’s RH SIP and thus, Utah asserts, the reductions may be considered as part of an alternative strategy under 40 CFR 51.308(e)(2)(iv).

The State’s demonstration is described in more detail in section III.B below. The State’s estimates of emissions for the Utah NO_x BART

Alternative and the BART Benchmark are provided in Table 2 of section III.B.4 below. EPA developed a summary of the emissions reductions based on Utah’s emission estimates and this is presented in Table 3 of section III.B.4 below.

B. Summary of Utah’s Demonstration for Alternative Program

As discussed above in Section II, a state may opt to implement an alternative measure rather than to require sources subject to BART to install, operate, and maintain source-specific BART. BART alternatives such as the Utah NO_x BART Alternative that are not emissions trading programs must meet the requirements of 40 CFR 51.308(e)(2)(i)–(iv).⁴² Utah has included the following information in its July 2019 SIP revision to address the regulatory criteria for an alternative program:⁴³

1. List of All BART-Eligible Sources Within the State

Pursuant to 40 CFR 51.308(e)(2)(i)(A), the SIP must include a list of all BART-eligible sources within the State. Utah included a list of BART-eligible sources and noted the following sources are all covered by the alternative program:

- PacifiCorp Hunter, Unit 1
- PacifiCorp Hunter, Unit 2
- PacifiCorp, Huntington, Unit 1
- PacifiCorp, Huntington, Unit 2

2. List of All BART-Eligible Sources and All BART Source Categories Covered by the Alternative Program

Pursuant to 40 CFR 51.308(e)(2)(i)(B), each BART-eligible source in the State must be subject to the requirements of the alternative program, have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART, or be otherwise addressed under paragraphs

51.308(e)(1) or (e)(4). In this instance, the alternative program covers all the BART-eligible sources in the state—Hunter Units 1 and 2 and Huntington Units 1 and 2—in addition to three non-BART units—PacifiCorp’s Hunter Unit 3 and Carbon Units 1 and 2.

3. Analysis of BART and Associated Emission Reductions Achievable

Pursuant to 40 CFR 51.308(e)(2)(i)(C), the SIP must include an analysis of BART and associated emission reductions achievable at the subject-to-BART units covered by the alternative program, here Hunter Units 1 and 2 and Huntington Units 1 and 2. In the July 2019 Utah RH SIP, the State compared the Utah NO_x BART Alternative to the most stringent NO_x controls, SCR plus upgraded combustion controls, at the four BART units, referred to here as the BART Benchmark. This is consistent with the BART determination made by EPA in our July 2016 final rule.⁴⁴

4. Analysis of Projected Emissions Reductions Achievable Through the BART Alternative

Pursuant to 40 CFR 51.308(e)(2)(i)(D), the SIP must include “[a]n analysis of the projected emissions reductions achievable through the . . . alternative measure.” A summary of the State’s estimates of emissions in tons per year (tpy) for the Baseline, NO_x BART Alternative and the BART Benchmark is provided in Table 2. A summary of the emissions reductions based on those emission estimates is presented in Table 3. The emissions and emission reductions were projected for the year

⁴⁴ In the July 2016 FIP, EPA determined these same controls—SCR plus LNB/SOFA—constitute BART for each of the four subject-to-BART units. Utah’s July 2019 SIP submittal thus refers to the BART Benchmark controls as the “EPA FIP”; while the controls represented by the BART Benchmark and EPA’s FIP are indeed the same, the relevant comparison for the purpose of this analysis is between the BART Benchmark and the BART alternative.

⁴¹ Utah Regional Haze State Implementation Plan, Staff Review of Recommended Alternative to BART for NO_x, May 28, 2019, p. 24.

⁴² States may address 40 CFR 51.308(e)(2)(v) at their option.

⁴³ See Staff Review.

2025 to align with the future year modeling scenarios used to calculate visibility benefits under the BART

Benchmark and BART Alternative, as described in the section that follows.⁴⁵

TABLE 2—ESTIMATED EMISSIONS IN 2025 UNDER THE BASELINE SCENARIO, BART BENCHMARK (BART BENCHMARK), AND THE BART ALTERNATIVE ⁴⁵

| Units | NO _x (tpy) | | | SO ₂ (tpy) | | | PM (tpy) | | | Combined | | |
|--------------------|-----------------------|----------------|-----------|-----------------------|----------------|-----------|----------|----------------|-----------|----------|----------------|--------|
| | Baseline | BART benchmark | BART alt. | Baseline | BART benchmark | BART alt. | Baseline | BART benchmark | BART alt. | Baseline | BART benchmark | |
| Carbon 1 | 1,312 | 1,312 | 0 | 2,286 | 2,286 | 0 | 120 | 120 | 0 | 3,718 | 3,718 | 0 |
| Carbon 2 | 1,977 | 1,977 | 0 | 3,528 | 3,528 | 0 | 183 | 183 | 0 | 5,688 | 5,688 | 0 |
| Hunter 1 | 6,380 | 796 | 3,166 | 2,535 | 1,153 | 1,153 | 733 | 733 | 733 | 9,648 | 2,682 | 5,052 |
| Hunter 2 | 6,092 | 798 | 3,028 | 2,531 | 1,408 | 1,408 | 717 | 717 | 717 | 9,340 | 2,923 | 5,153 |
| Hunter 3 | 6,530 | 6,530 | 4,490 | 1,204 | 1,230 | 1,230 | 531 | 531 | 531 | 8,265 | 8,291 | 6,251 |
| Huntington 1 | 5,944 | 793 | 3,147 | 2,380 | 1,254 | 1,254 | 517 | 517 | 517 | 8,841 | 2,564 | 4,918 |
| Huntington 2 | 5,816 | 753 | 3,366 | 12,308 | 1,201 | 1,201 | 1,033 | 1,033 | 1,033 | 19,157 | 2,987 | 5,600 |
| Total | 34,051 | 12,959 | 17,197 | 26,772 | 12,060 | 6,246 | 3,834 | 3,834 | 3,531 | 64,657 | 28,853 | 26,974 |

TABLE 3—EPA SUMMARY OF 2025 PROJECTED EMISSION REDUCTIONS ACHIEVABLE WITH THE UTAH NO_x BART ALTERNATIVE AS COMPARED TO THE BART BENCHMARK

| Description | Combined emissions for all units (tpy) | | | |
|---|--|-----------------|-------|----------|
| | NO _x | SO ₂ | PM | Combined |
| BART Benchmark | 12,959 | 12,060 | 3,834 | 28,853 |
| BART Alternative | 17,197 | 6,246 | 3,531 | 26,974 |
| Emission Reduction (BART Benchmark Minus BART Alternative) ¹ | -4,238 | 5,814 | 303 | 1,879 |

¹ A negative value indicates the BART Alternative results in more emissions of the specified pollutant in comparison to the BART Benchmark.

5. A Determination That the Alternative Achieves Greater Reasonable Progress Than Would Be Achieved Through the Installation and Operation of BART

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the State must provide a determination that the alternative program achieves greater reasonable progress than BART under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence.

Utah noted that the Hunter, Huntington, and Carbon plants are all located within 40 miles of each other in central Utah. Because of the close proximity of the three plants, the geographic distribution of emissions will not be substantially different under the alternative program. The combined emissions of NO_x, SO₂, and PM are 1,879 tons/yr lower under the alternative measure. However, the NO_x BART Alternative measure does not result in greater emission reductions of all pollutants—SO₂ emissions are lower by 5,814 tons/yr, PM are lower by 303

tons/yr, but NO_x emissions are higher by 4,238 tons/yr. Therefore, because the NO_x BART Alternative relies on SO₂ reductions, and to a lesser extent PM reductions, in lieu of NO_x reductions, Utah determined that greater reasonable progress must be demonstrated through the two-prong test based on dispersion modeling in 40 CFR 51.308(e)(3) or a clear weight of evidence analysis. The State chose to make this demonstration in the July 3, 2019 submittal using the two-prong test allowed for under 40 CFR 51.308(e)(3). To evaluate the two prongs, Utah relied on air quality modeling performed by a contractor for PacifiCorp using the Comprehensive Air Quality Model with Extensions (CAMx).⁴⁶

The CAMx model is a photochemical grid model that uses and produces complex scientific data, including emissions from all sources, with a realistic representation of formation, transport, and processes that cause

visibility degradation, estimating downwind concentrations paired in space and time. The EPA’s guidance supports use of this particular model for evaluation of visibility impacts from sources or source categories, such as application of the two-prong test under 40 CFR 51.308(e)(3).⁴⁷ The CAMx model simulates air quality over many geographic scales and treats a wide variety of inert and chemically active pollutants, including ozone, PM, inorganic and organic PM_{2.5}/PM₁₀, and mercury and other toxics. CAMx also has plume-in-grid and source apportionment capabilities.⁴⁸ CAMx has a scientifically current treatment of chemistry to simulate transformation of emissions into visibility-impairing particles of species such as ammonium nitrate and ammonium sulfate, and is often employed in large-scale modeling when many sources of pollution and/or long transport distances are involved. Photochemical grid models like CAMx

⁴⁵ Staff Review, Table 2, p. 12. Values rounded to the nearest ton.

⁴⁶ CAMx modeling software and User’s Guide are available at <http://www.camx.com/download/default.aspx>. CAMx version 6.10 was used for April to December, and CAMx version 6.40 was used for January to March.

⁴⁷ Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze, EPA Office of Air Quality Planning and Standards, Research Triangle Park, NC (November 2018). The main regional haze section of the guidance is related to setting

reasonable progress goals. However, the guidance methods may also be applicable to other regional haze related modeling, including, but not limited to, evaluation of visibility impacts from sources and/or source sectors. See *id.* at 143–145. https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf. 40 CFR pt. 51, app. Y: IV.D.5 (how to determine visibility impacts from the BART determination); 40 CFR 51.308(e)(3) (use of dispersion modeling for BART alternatives).

⁴⁸ Photochemical Air Quality Modeling (<https://www.epa.gov/scram/photochemical-air-quality-modeling>). CAMx is a photochemical grid model,

which the EPA describes as follows: Photochemical air quality models have become widely recognized and routinely utilized tools for regulatory analysis and attainment demonstrations by assessing the effectiveness of control strategies. These photochemical models are large-scale air quality models that simulate the changes of pollutant concentrations in the atmosphere using a set of mathematical equations characterizing the chemical and physical processes in the atmosphere. These models are applied at multiple spatial scales, including from local, regional, national and global.

include all emissions sources and have realistic representation of formation, transport, and removal processes of the particulate matter that causes visibility degradation. The use of the CAMx model for analyzing potential cumulative air quality impacts has been well established: The model has been used for previous visibility modeling studies in the U.S., including SIPs.⁴⁹ The modeling followed a modeling protocol that was reviewed by the EPA.⁵⁰

The Western Air Quality Study (WAQS)⁵¹ developed and evaluated a photochemical modeling platform for calendar year 2011⁵² for use in air quality planning studies in the western U.S. The modeling data sets, called the “WAQS 2011b platform,” are available to the public and served as the starting point for the CAMx modeling exercise. The WAQS 2011b modeling included a 2025 future year scenario that was used here to assess visibility impacts from the Baseline, BART Benchmark, and NO_x BART Alternative emissions scenarios.

Because regional haze is affected by natural and anthropogenic emissions from international sources, the WAQS 2011b modeling platform used a series of nested model simulations from the global to the regional scale. Global scale modeling was performed by the National Center for Atmospheric Research (NCAR) using the Model for Ozone And Related chemical Tracers (MOZART).⁵³ The WAQS 2011b used boundary concentrations data from the NCAR MOZART simulation to perform regional scale CAMx simulations using a coarse grid 36x36 km grid resolution for a model domain that included most of North America, a nested 12x12 km grid for a model domain that included all of the western U.S., and a fine scale

4x4 grid for a model domain that included the intermountain west region. The three nested CAMx modeling domains are illustrated in Figure 3.1 of WAQS 2011b model evaluation report.⁵⁴

The PacifiCorp CAMx modeling was based on the WAQS 2011b 4x4 grid modeling domain, but PacifiCorp initially used a smaller modeling domain designed to focus on the nine Class I areas within 300 km of the Hunter and Huntington BART sources that had been used in previous Utah DEQ CALPUFF modeling.⁵⁵ In response to comments from the EPA Region 8, PacifiCorp expanded the size of their proposed 4x4 km grid modeling domain to ensure that air parcel trajectories would remain within the model domain as they were transported from the BART sources to the nine Class I areas. The expanded PacifiCorp 4x4 km model domain included 15 Class I areas, as shown in Figure 6 of the Utah DEQ staff report.⁵⁶ While some Class I areas are more than 300 km from the BART sources, CAMx is accurate for long range transport and has been used by the EPA for analysis of long range transport of ozone and fine particulates at distances greater than 1,000 km. For completeness, the EPA recommended that PacifiCorp evaluate model results for all 15 Class I areas in the CAMx modeling domain.

The EPA provides guidance for the use of photochemical grid models such as CAMx for evaluating source contributions to regional haze. Because this notice addresses requirements for BART sources as part of the first regional haze planning period, the model results are being evaluated using procedures designed specifically for these requirements as outlined in the RHR and in a EPA Guidance published in 2007.⁵⁷ The RHR, 40 CFR 51.308(e)(3), requires that greater reasonable progress demonstrations for BART alternatives be evaluated for the best and worst 20% total haze days, which are selected for Class I areas using data from the IMPROVE monitoring network.⁵⁸ The IMPROVE

network consists of 110 monitoring sites designed to measure visibility impairment at the 155 mandatory Class I areas. While not all Class I areas have an IMPROVE monitor, the network was designed so that, where needed, measurements of one monitor would be representative of the regional haze conditions at more than one nearby Class I area.⁵⁹

Because models can be subject to bias and error in the simulation of the individual components of PM_{2.5} that contribute to regional haze, the EPA guidance recommends that photochemical model results be used by multiplying the model simulated change in each component of PM_{2.5} by the PM_{2.5} concentration measured by the IMPROVE monitoring network. The EPA has developed software, the Speciated Model Attainment Test (SMAT), that can be used to calculate the model relative response factor (RRF) for each PM_{2.5} species in an emissions control simulation compared to a base case simulation, and to multiply the model RRF by the observed IMPROVE PM_{2.5} concentrations for a five year period at the representative monitor for each Class I area.

As described in the model performance evaluation report for the WAQS 2011b platform, the model generally performed well at most sites in the western U.S. However, CAMx was biased low for ammonia and ammonium nitrate at some sites on the Colorado Plateau, *i.e.*, CAMx predicted lower concentrations of ammonia and ammonium nitrate than were measured at some monitoring sites. Because model predictions for ammonium nitrate at these sites are directly relevant to the comparison of the ammonium nitrate- and ammonium sulfate-related visibility benefits of the BART and BART Alternative scenarios, the EPA recommended that PacifiCorp perform additional model sensitivity simulations and performance evaluation to improve model performance for ammonia and ammonium nitrate on the Colorado Plateau. The EPA recommended that ammonia concentration be increased at the northern boundary of the model domain, located in the Salt Lake City area. Previous winter PM_{2.5} modeling studies performed by Utah DEQ found that winter ammonia emissions were underestimated in the Cache Valley in northern UT, and that model performance for ammonium nitrate improved when ammonia emissions

⁴⁹ See, e.g., 84 FR 22711 (May 20, 2019) (Final action for the Laramie River Station in the Regional Haze Plan for Wyoming); 82 FR 46903 (October 10, 2017) (Final action for the Coronado Generating Station in the Regional Haze Plan for Arizona); 81 FR 296 (January 5, 2016) (Final action for Texas and Oklahoma Regional Haze Plans).

⁵⁰ *Photochemical Modeling Protocol to Assess Visibility Impacts for PacifiCorp Power Plants Located in Utah*. AECOM Environment, January 2018.

⁵¹ *Memorandum: Recommendations on Use of Intermountain West Data Warehouse for Air Quality 2011b Model Platform*. Intermountain West Data Warehouse—Western Air Quality Study Oversight Committee. July 6, 2016. Available http://views.cira.colostate.edu/wiki/Attachments/Modeling/IWDW-WAQS_2011b_ModelingPlatform_Release_Memo%20July6_2016final.pdf.

⁵² “Western Air Quality Modeling Study Photochemical Grid Model Final Model Performance Evaluation”, available in the docket and at: http://views.cira.colostate.edu/wiki/Attachments/Modeling/WAQS_Base11b_MPE_Final.pdf.

⁵³ The MOZART model formulation is described at https://en.wikipedia.org/wiki/MOZART_.

⁵⁴ *Id.* 56, p. 5.

⁵⁵ Model applications using CALPUFF for BART sources typically—but not in all cases—have included Class I areas only up to a distance 300 km because uncertainty in CALPUFF results increases at distances greater than 300 km.

⁵⁶ Staff Review, Figure 6, p. 18.

⁵⁷ *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program*, available at: https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20070601_wehrum_reasonable_progress_goals_reghaze.pdf.

⁵⁸ The IMPROVE monitoring network is described at: <http://vista.cira.colostate.edu/Improve/improve-program/>.

⁵⁹ The use of a representative IMPROVE monitor for groups of nearby Class I areas is described at: <http://vista.cira.colostate.edu/Improve/wp-content/uploads/2016/04/Chapter1.pdf>.

were increased so that the model-simulated ammonia matched observed ammonia concentrations. For the sensitivity study, PacifiCorp used the Utah DEQ winter PM_{2.5} model results to define the ammonia concentrations at the northern boundary of the PacifiCorp modeling domain. Additionally, the EPA recommended changes to a model parameter that affects ammonia dry deposition to surfaces.⁶⁰

PacifiCorp adopted both of these recommendations and performed a new base case model simulation and performance evaluation. This resulted in substantial improvements in model performance for ammonia and ammonium nitrate on the Colorado Plateau. Because the new base case model more accurately simulates the observed ammonia and ammonium nitrate concentrations, it is also expected to provide more accurate predictions of the visibility benefits of changes in NO_x emissions for the EPA BART Benchmark and Utah NO_x BART Alternative. These model results are described in Appendix A of the Utah DEQ *Staff Review*. The revised base case model configuration was then used for the 2011 Typical Year model simulation, the 2025 Baseline model simulation, and for the 2025 BART Benchmark and 2025 Utah NO_x BART Alternative model simulations, described below.

Using the WAQS 2011b platform, CAMx was configured to simulate the following modeling scenarios:

- 2011 Typical Year. This 2011 scenario allows for the development of RRFs that are applied to observed concentrations in order to predict future visibility conditions. The Carbon, Hunter and Huntington power plants were modeled at levels representative of the period 2001 to 2003, while all other sources remain at the levels of the 2011 WAQS base year simulation.

- 2025 Baseline. Emissions from Carbon, Hunter and Huntington are identical to the Typical Year modeling Scenario (*i.e.*, 2001–2003). All other emissions sources remain at the levels of the 2025 WAQS future-year simulation.

⁶⁰In an email dated 9/26/2017, Chris Emery of Ramboll, the developer of the CAMx model, identified an error in the model settings that caused it to overestimate the deposition and removal of gas phase ammonia in the model. The default model configuration included a setting that specified zero surface resistance to ammonia deposition which tends to overestimate ammonia deposition to surfaces and to underestimate the ambient concentrations of ammonia and ammonium nitrate. Mr. Emery recommended changing the model configuration to include surface resistance to ammonia deposition.

- BART Benchmark. This 2025 scenario represents the BART Benchmark and simulates the emission control strategy for Hunter and Huntington units required in the 2016 FIP. Specifically, emissions for the four BART units reflect a 30-day rolling average NO_x emission limit of 0.07 lb/MMBtu consistent with the installation and operation of SCR plus upgraded combustion controls. SO₂ emissions for the Hunter and Huntington units reflect representative emissions from 2014–2016 in order to match the BART Alternative scenario. The BART Benchmark scenario also includes the Carbon power plant using the same level of emissions as the Baseline scenario (*i.e.*, 2001–2003). All other emissions sources remain at the levels of the 2025 WAQS future-year simulation.

- Utah NO_x BART Alternative. This 2025 scenario simulates the emission control strategy for Carbon, Hunter and Huntington units required by the BART Alternative SIP as represented in Table 2 above. This scenario simulates representative emissions of NO_x and SO₂ from Hunter and Huntington units during the period 2014 to 2016, which include the emissions controls required under the Alternative (*i.e.*, the upgraded combustion controls). For this scenario, the Carbon power plant emissions were zero since the power plant was decommissioned in April 2015, as required under the Alternative. All other emissions sources remain at the levels of the 2025 WAQS future-year simulation.

All other model inputs, including other regional emissions sources, were held constant for the future-year (Baseline, BART Benchmark, and BART Alternative) scenarios. Thus, any differences in the visibility impacts between the modeled control scenarios and the Baseline, and between the two control scenarios (*i.e.*, BART and the BART Alternative), are attributable solely to differences in the associated emission inputs for the seven PacifiCorp units. The CAMx-modeled concentrations for sulfate, nitrate, and other chemical species were tracked for the Hunter, Huntington, and Carbon power plants using the CAMx Particulate Source Apportionment Technology (PSAT) so that the concentrations and visibility impacts due to the seven PacifiCorp units could be separated out from those due to the total of all other modeled sources. Visibility impacts were assessed at the

15 Class I areas contained inside of the modeling domain.^{61 62}

The visibility impacts derived from the CAMx modeling results are summarized in Tables 4 and 5 of this notice.⁶³ The tables show the projected contribution to visibility impairment due to emissions from the seven EGUs covered by the Alternative on the 20 percent best days and worst days respectively for the Baseline, the BART Benchmark, and the proposed BART Alternative scenarios at each of the Class I areas analyzed. The last two columns show the predicted visibility benefits from the BART Alternative scenario relative to both the Baseline and the BART Benchmark. At the bottom of each table are the average visibility values from all the Class I areas. Negative values in the last two columns indicate that the BART Alternative has smaller modeled contributions to visibility impairment relative to the Baseline and the BART Benchmark.

Column D in Table 4 shows that emissions from the seven EGUs under the BART Alternative will not result in degradation of visibility on the 20 percent best days compared to the Baseline at any one of the 15 Class I areas. Similarly, Column D in Table 5 shows that, on the 20 percent worst days, visibility impairment is less under the BART Alternative than the Baseline in each of the Class I areas. Based on these results, the State concluded that visibility does not decline at any of the 15 Class I areas and therefore the BART Alternative meets prong 1 of the “greater reasonable progress using dispersion modeling” test found in 40 CFR 51.308(e)(3).

The State next made a determination that the BART Alternative meets prong 2 of the “greater reasonable progress using dispersion modeling” test found in 40 CFR 51.308(e)(3) by comparing the average difference between the BART Alternative and the BART Benchmark.

⁶¹ *Staff Review*, pp. 17–18. Specifically, see rectangular CAMx modeling domain with 4-kilometer grid resolution in Figure 4–1.

⁶² By contrast, in the CALPUFF modeling supporting EPA’s 2016 FIP, visibility impacts were assessed for the nine Class I areas within 300 kilometers of the BART units. The rectangular CAMx modeling domain was designed to be large enough to include these nine Class I areas and to include air parcel trajectories from those sources to the Class I areas. In response to EPA Region 8 comments on a draft modeling protocol, the rectangular CAMx model domain was expanded further to the east, north and south to ensure that emissions from the sources would remain within the model domain as they were transported from the sources to the affected Class I areas. For completeness, results for all Class I areas located within the rectangular CAMx domain were included in the analysis.

⁶³ *Staff Review*, pp. 16–21.

The last row of column E in Tables 4 and 5 show the average difference in visibility between the BART Alternative and the BART Benchmark for the 20 percent best and worst days respectively. The negative number indicates that the average visibility improvement of the BART Alternative is better than the BART Benchmark in both cases. Relative to the BART Benchmark, the BART Alternative achieves an average visibility improvement of 0.00494 dv across all

Class I areas on the 20 percent best days, and of 0.00058 dv on the 20 percent worst days. Therefore, Utah determined that the BART Alternative meets prong 2 of the 40 CFR 51.308(e)(3) test.

Utah noted that the language in 40 CFR 51.308(e)(3)(i) and (ii) indicates allowance of a straight numerical test. The State explained that the regulation does not specify that a minimum difference in deciview between the scenarios must be achieved to determine that a BART Alternative achieves greater

reasonable progress. Because the modeling results show that visibility under the BART Alternative does not decline at any of the 15 affected Class I areas compared to the Baseline (prong 1) and will result in improved visibility, on average, across all 15 Class I areas compared to the BART Benchmark (prong 2), Utah asserted that the BART Alternative will achieve greater reasonable progress than the BART Benchmark under the two-prong modeling test in 40 CFR 51.308(e)(3).

TABLE 4—VISIBILITY IMPACTS IN 2025 FOR THE BASELINE, BART BENCHMARK AND BART ALTERNATIVE SCENARIOS ON THE 20 PERCENT BEST DAYS ⁶⁴

| Class I area | Baseline (dv) | BART Benchmark (dv) | BART alternative (dv) | BART alternative—baseline | BART alternative—BART benchmark |
|---------------------------------------|---------------|---------------------|-----------------------|---------------------------|---------------------------------|
| | [A] | [B] | [C] | [D] | [E] |
| Arches NP | 0.10300 | 0.05607 | 0.03851 | -0.06449 | -0.01756 |
| Black Canyon of the Gunnison NM | 0.02769 | 0.01611 | 0.01162 | -0.01607 | -0.00449 |
| Bryce Canyon NP | 0.00528 | 0.00254 | 0.00228 | -0.00300 | -0.00026 |
| Canyonlands NP | 0.10300 | 0.05607 | 0.03851 | -0.06449 | -0.01756 |
| Capitol Reef NP | 0.14218 | 0.07222 | 0.07140 | -0.07078 | -0.00082 |
| Flat Tops WA | 0.02834 | 0.01488 | 0.01115 | -0.01719 | -0.00373 |
| Grand Canyon NP | 0.07136 | 0.03567 | 0.03611 | -0.03525 | 0.00044 |
| La Garita WA | 0.02769 | 0.01611 | 0.01162 | -0.01607 | -0.00449 |
| Maroon Bells-Snowmass WA | 0.02834 | 0.01488 | 0.01115 | -0.01719 | -0.00373 |
| Mesa Verde NP | 0.06356 | 0.03381 | 0.02749 | -0.03607 | -0.00632 |
| Mount Zirkel WA | 0.04209 | 0.02060 | 0.01471 | -0.02738 | -0.00589 |
| San Pedro Parks WA | 0.03627 | 0.01742 | 0.01593 | -0.02034 | -0.00149 |
| Weminuche WA | 0.02769 | 0.01611 | 0.01162 | -0.01607 | -0.00449 |
| West Elk WA | 0.02834 | 0.01488 | 0.01115 | -0.01719 | -0.00373 |
| Zion NP ¹ | 0.00612 | 0.00291 | 0.00300 | -0.00312 | 0.00009 |
| All Class I area Average | 0.04940 | 0.02602 | 0.02108 | N/A | -0.00494 |

¹ Results based on incomplete dataset. Zion NP monitor did not meet the 75% data completion SMAT requirement for year 2011.

TABLE 5—VISIBILITY IMPACTS IN 2025 FOR THE BASELINE, BART BENCHMARK, AND BART ALTERNATIVE SCENARIOS ON THE 20 PERCENT WORST DAYS ⁶⁵

| Class I area | Baseline (dv) | BART Benchmark (dv) | BART alternative (dv) | BART alternative—baseline | BART alternative—BART benchmark |
|---------------------------------------|---------------|---------------------|-----------------------|---------------------------|---------------------------------|
| | [A] | [B] | [C] | [D] | [E] |
| Arches NP | 0.25740 | 0.13780 | 0.12584 | -0.13156 | -0.01196 |
| Black Canyon of the Gunnison NM | 0.01265 | 0.00682 | 0.00540 | -0.00725 | -0.00142 |
| Bryce Canyon NP | 0.04945 | 0.02184 | 0.02470 | -0.02475 | 0.00286 |
| Canyonlands NP | 0.25740 | 0.13780 | 0.12584 | -0.13156 | -0.01196 |
| Capitol Reef NP | 0.26010 | 0.11672 | 0.14568 | -0.11442 | 0.02896 |
| Flat Tops WA | 0.02703 | 0.01387 | 0.01011 | -0.01692 | -0.00376 |
| Grand Canyon NP | 0.00186 | 0.00089 | 0.00056 | -0.00130 | -0.00033 |
| La Garita WA | 0.01265 | 0.00682 | 0.00540 | -0.00725 | -0.00142 |
| Maroon Bells-Snowmass WA | 0.02703 | 0.01387 | 0.01011 | -0.01692 | -0.00376 |
| Mesa Verde NP | 0.06203 | 0.02524 | 0.02959 | -0.03244 | 0.00435 |
| Mount Zirkel WA | 0.03312 | 0.01705 | 0.01198 | -0.02114 | -0.00507 |
| San Pedro Parks WA | 0.00154 | 0.00074 | 0.00073 | -0.00081 | -0.00001 |
| Weminuche WA | 0.01265 | 0.00682 | 0.00540 | -0.00725 | -0.00142 |
| West Elk WA | 0.02703 | 0.01387 | 0.01011 | -0.01692 | -0.00376 |
| Zion NP ¹ | 0.00155 | 0.00051 | 0.00051 | -0.00104 | 0.00000 |
| All Class I area Average | 0.06957 | 0.03471 | 0.03413 | N/A | -0.00058 |

¹ Results based on incomplete dataset. Zion NP monitor did not meet the 75% data completion SMAT requirement for year 2011.

6. Requirement That Emission Reductions Take Place During Period of First Long-Term Strategy

Pursuant to 40 CFR 51.308(e)(2)(iii), the State must ensure that all necessary emission reductions take place during the period of the first long-term strategy for regional haze. The RHR further provides that, “[t]o meet this requirement, the State must provide a detailed description of the . . . alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.”⁶⁶

As noted above, the December 3, 2019 supplement includes revisions to R307–110–17, the State rule that in turn incorporates Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, which includes provisions for implementing the Utah NO_x BART Alternative. In addition to the emission limitations for NO_x and PM at Hunter and Huntington⁶⁷ and the requirement for shutdown of the Carbon Plant listed in Table 1 above (which the State notes was made enforceable by August 15, 2015), the SIP submission includes compliance dates, operation and maintenance requirements, and MRR requirements. Utah asserts that the

alternative measure was fully implemented prior to 2018.

7. Demonstration That Emissions Reductions From Alternative Measure Will Be Surplus

Pursuant to 40 CFR 51.308(e)(2)(iv), the SIP must demonstrate that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. The baseline date for regional haze SIPs is 2002.⁶⁸ Utah developed the 2002 baseline inventory in its 2008 RH SIP for regional modeling, evaluating the impact on Class I areas outside of the Colorado Plateau, and BART as outlined in the EPA Guidance and the BART Guidelines, issued on July 6, 2005. Utah noted that 2002 is the baseline inventory that was used by other states throughout the country when evaluating BART under the provisions of 40 CFR 51.308 and that any measure adopted after 2002 is considered “surplus” under 40 CFR 51.308(e)(2)(iv). Utah referenced other EPA actions that are consistent with this interpretation.⁶⁹ Utah stated that the BART Benchmark scenario includes measures required before the baseline date of the SIP (*i.e.*, 2002) but does not include later measures that are credited as part of the BART Alternative scenario.

Utah explained that, to address potential concerns with double counting SO₂ emission reductions from the

Carbon plant closure under both the 308 and 309 programs, the July 2019 SIP submission includes revisions to the applicability provisions of State Rule State Rule R307–150, Emission Inventories, to prevent double counting. Utah also provided explanation why the emission reductions counted towards the NO_x BART Alternative are surplus to those needed to satisfy the requirements of the SO₂ Backstop Trading Program.⁷⁰ The State explained that the WRAP modeling done to support the Utah RH backstop trading program SIP included regional SO₂ emissions based on the 2018 SO₂ milestone and also included NO_x and PM emissions from the Carbon plant. Actual emissions in the three-state region (Utah, Wyoming, and New Mexico) are calculated each year and compared to the milestones. Utah provided the information in Table 6 below to show that since 2011, SO₂ emissions in the three-state region have been below the 2018 milestone (141,849 tpy). Utah noted that the most recent milestone report for 2016 demonstrates that SO₂ emissions are currently 36 percent lower than the 2018 milestone. Utah stated that the Carbon plant was fully operational in the years 2011–2013 when the 2018 milestone was initially achieved for those years. The State noted that the SO₂ emission reductions from the closure of the Carbon plant are surplus to what is needed to meet the 2018 milestone established in Utah’s RH SIP.

TABLE 6—SO₂ MILESTONE TRENDS⁷¹

| Year | Milestone (tpy) | Three-year average SO ₂ emissions ¹ (tpy) | Carbon plant SO ₂ emissions (tpy) |
|------|-----------------|---|--|
| 2003 | 303,264 | 214,780 | 5,488 |
| 2004 | 303,264 | 223,584 | 5,642 |
| 2005 | 303,264 | 220,987 | 5,410 |
| 2006 | 303,264 | 218,499 | 6,779 |
| 2007 | 303,264 | 203,569 | 6,511 |
| 2008 | 269,083 | 186,837 | 5,057 |
| 2009 | 234,903 | 165,633 | 5,494 |
| 2010 | 200,722 | 146,808 | 7,462 |
| 2011 | 200,722 | 130,935 | 7,740 |
| 2012 | 200,722 | 115,115 | 8,307 |
| 2013 | 185,795 | 105,084 | 7,702 |
| 2014 | 170,868 | 96,302 | 9,241 |
| 2015 | 155,940 | 91,310 | 2,816 |
| 2016 | 155,940 | 90,591 | 0 |
| 2017 | 155,940 | ..... | ..... |
| 2018 | 141,849 | ..... | ..... |

¹ The three-year average is based on the emissions averaged for the current and two preceding years.

⁶⁴ Staff Review, Table 4, p. 19.

⁶⁵ Staff Review, Table 5, p. 20.

⁶⁶ 40 CFR 51.308(e)(2)(iii).

⁶⁷ EPA previously approved the BART PM emission limits in our July 2016 final rule. 81 FR 43894 (July 5, 2016).

⁶⁸ See Memorandum from Lydia Wegman and Peter Tsirigotis, 2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM_{2.5}, and Regional Haze Programs (Nov. 18, 2002), available at https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20021118_wegman_2002_base_year_emission_sip_planning.pdf.

⁶⁹ *E.g.*, 79 FR 33438, 33441–33442 (June 11, 2014); 79 FR 56322, 56328 (Sept. 9, 2014).

⁷⁰ Staff Review at 23–25.

For Hunter Unit 3, Utah also explained that PacifiCorp upgraded the LNB controls in 2008 and that the upgrade was not required under any applicable requirements of the CAA as of the 2002 baseline date of the SIP; the emission reductions from the upgrade are therefore considered surplus and creditable for the BART Alternative under 40 CFR 51.308(e)(2)(iv). Utah noted that prior to the 2008 upgrade, the emission rate for Hunter Unit 3 was 0.46 lb/MMBtu on a 30-day rolling average as required by Phase II of the Acid Rain Program.⁷²

To address potential concerns that Utah would be double counting SO₂ emissions reductions for the Carbon plant closure under both the 40 CFR 51.308 and 309 programs, the July 2019 SIP revisions require that the State continue to report the historical emissions for the Carbon plant in the annual milestone reports. Specifically, revisions to the applicability provisions of State rule R307–150 (“Emission Inventories Program”) require that Utah include emissions of 8,005 tons/yr⁷³ of SO₂ for the Carbon Power Plant in the annual milestone reports.

C. Monitoring, Recordkeeping and Reporting

To address EPA’s partial disapproval of the 2011 Utah RH SIP for lack of enforceable measures and MRR requirements,⁷⁴ in 2015 Utah added two new subsections to SIP Sections IX, H.21 (General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements) and H.22 (Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology).

Specifically, to remedy the SIP’s lack of provisions for ensuring that emission

limits are practically enforceable, under H.21 Utah added a new definition for boiler operating day. Utah noted that state rules R307–107–1 and R307–107–2 (applicability, timing, and reporting of breakdowns) apply to sources subject to regional haze requirements under H.22. Utah required that information used to determine compliance shall be recorded for all periods when the source is in operation, and that such records shall be kept for a minimum of five years. Under H.21, Utah specified that emission limitations listed in H.22 shall apply at all times and identified stack testing requirements to show compliance with those emission limitations. Finally, H.21 also specifies the requirements for continuous emission monitoring by listing the requirements and cross-referencing the State’s rule for continuous emission monitoring system requirements, R307–170, as well as 40 CFR 13⁷⁵ and 40 CFR 60, appendix B—Performance Specifications. Utah included the requirements to calculate hourly average NO_x concentrations for any hour in which fuel is combusted and a new 30-day rolling average emission rate at the end of each boiler operating day. Utah also noted that the hourly average NO_x emission rate is valid only if the minimum number of data points specified in R307–170 is acquired for both the pollutant concentration monitor and diluent monitor.

Under H.22, Utah provided the emission limitations associated with the NO_x BART Alternative and PM BART for Hunter Units 1 through 3 and Huntington Units 1 and 2, a requirement to perform annual stack testing for PM, and a requirement to measure NO_x via continuous emission monitoring for the sources covered under the Utah NO_x BART Alternative. Under H.22, Utah also listed the enforceable conditions related to closing Carbon Units 1 and 2 by August 15, 2015, including PacifiCorp’s and Utah’s notification and permit rescission obligations.

In our 2016 final rule, EPA approved subsection H.21 and H.22 as they pertain to PM BART, including conditional approval of the reporting requirements. We did not act on the elements of those subsections relating to the NO_x BART Alternative, as EPA disapproved the Alternative in that action. Utah resubmitted subsections H.21 and H.22 as part of their July 3, 2019 SIP submittal. In its December 3, 2019 supplemental submission, to address the issue implicated in the conditional approval, under H.21(e)

Utah required each source to submit a report of any deviation from applicable emission limits and operating practices, including deviations attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken.

D. Consultation With FLMs

Utah’s SIP submittals do not specifically discuss how it addressed the requirements of 40 CFR 308(i)(2) for providing the FLMs with an opportunity for consultation at least 60 days prior to holding the public hearing for the July 2019 RH SIP. However, we are aware that Utah consulted with the FLMs as explained in section IV.D, and the relevant exchange is included in the docket for this action.

IV. EPA’s Evaluation and Proposed Approval of Utah’s Regional Haze SIP

A. Basis for Proposed Approval

For the reasons described below, EPA proposes to approve the Utah 2019 RH SIP revisions. Our proposed action is based on an evaluation of Utah’s regional haze SIP submittals against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. The revisions were also evaluated against the general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action. The EPA proposes to approve these SIP revisions as meeting the relevant CAA requirements. Where appropriate, we provide additional rationale to supplement to the state’s analysis and to support our conclusions below.

B. Demonstration of Greater Reasonable Progress for the Alternative Program

As provided under 40 CFR 51.309(d)(4)(vii), Utah has opted to establish an alternative measure (or program) for NO_x emissions from the four subject-to-BART units in accordance with 40 CFR 51.308(e)(2). A description of the Utah NO_x BART Alternative is provided above in section III.A.1. The RHR requires that a SIP revision establishing a BART alternative meet three key requirements (in addition to other elements in section 308(e)(2)) as listed below. We have evaluated the Utah NO_x BART Alternative with respect to each of these requirements.

- A demonstration that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the

⁷¹ Staff Review, p 24.

⁷² There is an error on page 25 of the Staff Review. The reference to Hunter Unit 2 should be Unit 3 based on the section heading as well as confirmed emission limits in Utah Approval Order DAQE–AN0102370012–08.

⁷³ Note that this value is based on the 2012–2013 actual annual average SO₂ emissions for the Carbon power plant as used in Utah’s June 4, 2015 SIP submission. By contrast, Utah’s July 3, 2019 SIP submission uses a consistent baseline for Hunter, Huntington and Carbon based on actual annual average emissions from 2001–2003 when the SO₂ emissions for Carbon were 5,814 tons/year. That is, the revisions to the SO₂ milestone reporting requirements attribute a greater amount of tons of SO₂ to the Carbon plant than the State assumed will be reduced from the plant’s retirement, for purposes of making the demonstration that the BART Alternative achieves greater reasonable progress than BART. As such, Utah’s analysis of its compliance with the SO₂ milestone as well as its demonstration of greater reasonable progress for the BART Alternative are both conservative.

⁷⁴ 77 FR 28825, 28842 (May 16, 2012).

⁷⁵ This appears to be a typo, and the correct reference should be to 40 CFR 60.13.

State and covered by the alternative program.⁷⁶

- A requirement that all necessary emissions reductions take place during the period of the first long-term strategy for regional haze.⁷⁷

- A demonstration that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.⁷⁸

As discussed above in section II.C, pursuant to 40 CFR 51.308(e)(2)(i), Utah must demonstrate that the alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program. This demonstration has five parts, each of which is addressed in the July 2019 SIP submittal, including the *Staff Review* support document.

1. List of All BART-Eligible Sources Within the State

As discussed above in section III.B.1, Utah included a list of all BART-eligible sources:

- PacifiCorp Hunter, Unit 1
- PacifiCorp Hunter, Unit 2
- PacifiCorp, Huntington, Unit 1
- PacifiCorp, Huntington, Unit 2

EPA previously approved Utah's BART eligibility determinations in our 2012 rulemaking,⁷⁹ and we are now proposing that this same list satisfies the requirements of 40 CFR 51.308(e)(2)(i)(A).

2. List of All BART-Eligible Sources and All BART Source Categories Covered by the Alternative Program

As discussed above in section III.B.2, the Utah NO_x BART Alternative covers all of the BART-eligible sources in the State, Hunter Units 1 and 2 and Huntington Units 1 and 2, in addition to three non-BART units, PacifiCorp's Hunter Unit 3 and Carbon Units 1 and 2. We propose that Utah has satisfied the requirement of 40 CFR 51.308(e)(2)(i)(B).

3. Analysis of BART and Associated Emission Reductions

As noted above in section III.B.3, in the July 2019 Utah RH SIP submittal, the State compared the Utah NO_x BART Alternative to a BART Benchmark that included the most stringent NO_x BART controls, SCR plus upgraded combustion controls, at the four BART

units. While the State explicitly noted that it was not determining that SCR plus upgraded combustion controls would constitute source-specific BART at the four subject-to-BART units, it explained that this technology "can be used as a stringent benchmark for comparison with an alternative program" and it is "a conservative approach."⁸⁰ We are proposing to find that this is a reasonable approach to setting the BART Benchmark for purposes of comparison to a BART alternative program, and is consistent with the streamlined approach described in Step 1 of the BART Guidelines. The BART Guidelines note that a comprehensive BART analysis can be forgone if a source adopts the most stringent controls available for the purpose of implementing BART.⁸¹ Moreover, when EPA established NO_x BART in our 2016 FIP, we also selected SCR plus upgraded combustion controls (with an emission limit of 0.07 lb/MMBtu as a 30-day rolling average), which further reinforces the reasonableness of Utah's decision to treat the most stringent controls as the BART Benchmark.

Utah then used modeling projections for the year 2025 to determine the associated emission reductions that would result under the BART Benchmark. These results are provided above in Table 2 of this notice. The EPA proposes to find that the methodology Utah used to develop the projection of emissions under the BART Benchmark is reasonable because it reflects the most stringent control option.

We propose to find that Utah has met the requirement for an analysis of BART and associated emission reductions achievable at Hunter Units 1 and 2 and Huntington Units 1 and 2 under 40 CFR 51.308(e)(2)(i)(C).

4. Analysis of Projected Emissions Reductions Achievable Through the BART Alternative

Utah's NO_x BART Alternative consists of the following enforceable measures:

- A NO_x emission limit of 0.26 lb/MMBtu (30-day rolling average) each for Hunter Units 1 and 2 and Huntington 1 and 2.
- A NO_x emission limit of 0.34 lb/MMBtu (30-day rolling average) for Hunter Unit 3.
- A requirement to permanently close and cease operation of the Carbon power plant by August 15, 2015.

As discussed above in section III.B.4, a summary of Utah's estimates of

emissions for the Utah NO_x BART Alternative and the BART Benchmark is provided above in Table 2. Note that the values in Table 2 differ from the analogous table in our 2016 proposed rule⁸² for the following reasons. First, in addition to the BART Benchmark and BART Alternative, the table now includes projections for the Baseline emissions scenario. All three of these projected 2025 scenarios relate to the CAMx modeling used to demonstrate that the BART Alternative will achieve greater progress than BART under the two-prong test of 40 CFR 51.308(e)(3), as discussed in sections III.B.5 and IV.B.5 of this notice. The 2025 Baseline is used in the first prong of the two-prong test to demonstrate that visibility under the BART Alternative does not decline at any of the 15 affected Class I areas. Second, to ensure that the selection of baseline emissions does not bias the determination of whether the BART Alternative achieves greater reasonable progress, the projected emissions for all three 2025 scenarios are calculated from a consistent baseline of 2001–2003 for all BART-eligible and non-BART units covered by the BART Alternative. That is, when establishing emission assumptions for the 2011 Typical Year modeling scenario, annual emission rates for the seven units were set equal to 2001–2003 actual average emissions, and these annual emission rates were then projected to 2025 to reflect the NO_x controls anticipated under each future year scenario. Note that although the 2025 Baseline scenario is a projection of 2025 emissions for all other sources in the modeling domain, the Baseline emissions for the seven units in Table 2 reflect 2001–2003 emissions. This approach was chosen so that the 2025 Baseline reflects emissions at the subject-to-BART units at the Hunter and Hunter power plants prior to the installation of any controls or other measures intended to meet BART requirements. Finally, the 2001–2003 baseline period also aligns with that used by EPA in our evaluation of BART under the FIP in our 2016 final rule.

Relative to the 2025 Baseline, the BART Benchmark and BART Alternative include actual SO₂ reductions from Hunter and Huntington that occurred after the 2001–2003 baseline due to scrubber upgrades. Thus, the CAMx modeling results for the BART Benchmark and BART Alternative shown in Tables 4 and 5 of this notice reflect these SO₂ reductions. The treatment of these SO₂ reductions in the modeling does not affect the determination of greater reasonable

⁷⁶ 40 CFR 51.308(e)(2)(i).

⁷⁷ 40 CFR 51.308(e)(2)(iii).

⁷⁸ 40 CFR 51.308(e)(2)(iv).

⁷⁹ 77 FR 74355, 74357 (Dec. 14, 2012).

⁸⁰ *Staff Review* at 12.

⁸¹ 40 CFR 51, appendix Y, section IV.D.1.9.

⁸² Table 3; 81 FR 2015.

progress under the two-prong test. Under prong 1, while the SO₂ reductions from Hunter and Huntington increase the apparent overall visibility benefit of the BART Alternative relative to the Baseline, there would not be an anticipated decline in visibility relative to the Baseline in the absence of those SO₂ reductions from Hunter and Huntington because the BART Alternative would still result in overall NO_x, SO₂, and PM emissions decreases compared to the Baseline. Under prong 2, because the SO₂ reductions from Hunter and Huntington are equal under the BART Alternative and BART Benchmark, they do not advantage either control scenario. Accordingly, the EPA proposes to find that the methodology Utah used to develop the modeling scenarios, including the projection of emissions under the Utah NO_x BART Alternative, is reasonable and that Utah has met the requirement for an analysis of the projected emissions reductions achievable through the alternative measure under 40 CFR 51.308(e)(2)(i)(D).

5. Determination That the Alternative Achieves Greater Reasonable Progress Than Would Be Achieved Through the Installation and Operation of BART

As discussed above in section III.B.5, Utah used CAMx modeling to assess whether the NO_x BART alternative will achieve greater reasonable progress than the BART Benchmark under the two-prong quantitative test provided for in 40 CFR 51.308(e)(3)(i) and (ii). The CAMx modeling results in Tables 4 and 5 show both prongs of the two-prong test are satisfied: Visibility does not decline in any Class I area under the BART Alternative relative to the Baseline on both the 20% best or 20% worst days, and the average visibility improvement across all affected Class I areas is greater under the BART Alternative than under the BART Benchmark. EPA reviewed the CAMx protocol before the modeling was undertaken. PacifiCorp revised the modeling methods and assumptions to address EPA's concerns. Notably, as discussed above in section III.B.5, PacifiCorp revised the ammonia emission inventory and related input parameters to improve the model's ability to simulate ammonia and ammonium nitrate concentrations on the Colorado Plateau, thus also improving the model's ability to estimate visibility impacts resulting from NO_x emissions. In addition, the analysis was expanded to assess all 15 class I areas in the modeling domain.

As noted above, Utah submitted the same proposed NO_x BART Alternative

in its June 2015 submission under the qualitative clear-weight-of-evidence test in 40 CFR 51.308(e)(2)(i)(E). In July 2016, EPA determined that, based on the weight-of-evidence demonstration before us at that time, Utah had not demonstrated that the BART Alternative resulted in greater visibility improvement than would BART. However, as noted by the U.S. Court of Appeals for the Tenth Circuit, under EPA's interpretation of its regulations a state can choose either the quantitative tests (as applicable) in 51.308(e)(3) or the qualitative test in 51.308(e)(2)(i)(E).⁸³ We believe it follows that a reasonable interpretation of our regulatory scheme allows for a situation in which certain evidence would not be sufficient to make a showing under one "better-than-BART" test, but different evidence could support that showing under a separate test. That is, we believe that just because a certain set of evidence failed to show that a BART alternative would achieve greater visibility improvement under the "clear weight of evidence" test, that does not necessarily mean that the alternative does not in fact make greater reasonable progress than BART, as demonstrated through dispersion modeling under the two-prong test in section 308(e)(3). Accordingly, we propose to approve Utah's determination that the Utah NO_x BART Alternative would achieve greater reasonable progress than BART under 40 CFR 51.308(e)(3).

6. Requirement That Emission Reductions Take Place During Period of First Long-Term Strategy

As discussed above in section III.B.6, pursuant to 40 CFR 51.308(e)(2)(iii), the State must ensure that all necessary emission reductions take place during the period of the first long-term strategy for regional haze. The RHR further provides that, to meet this requirement, the State must provide a detailed description of the alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.⁸⁴

The NO_x controls on which the BART Alternative relies were installed at Hunter and Huntington over a period of years starting in 2006 and finishing in

2014.⁸⁵ The associated emissions limits were effective upon installation of the NO_x controls.⁸⁶ Carbon shut down in 2015 and its Approval Order has been revoked.⁸⁷ Further, as noted above, the Utah SIP submittals include revisions to R307-110-17 and Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, which include enforceable provisions for implementing the Utah NO_x BART Alternative. In addition to the emission limitations for NO_x and PM, and the requirement for shutdown of the Carbon plant listed in Table 1 above, the SIP includes compliance dates, operation and maintenance requirements, and monitoring, recordkeeping, and reporting requirements. We propose to find that these provisions meet the requirements of 40 CFR 51.308(e)(2)(iii).

7. Demonstration That Emission Reductions From Alternative Measure Will Be Surplus

As discussed above in section III.B.7, pursuant to 40 CFR 51.308(e)(2)(iv), the SIP must demonstrate that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. The baseline date for regional haze SIPs is 2002.⁸⁸ As discussed in section III.B.7, all of the emission reductions required by the Utah NO_x BART Alternative result from measures applicable to Hunter, Huntington and Carbon that were required pursuant to measures adopted after 2002.

Furthermore, the State's SIP explains that the WRAP modeling for the 2018 Reasonable Progress Goals that was done to support the Utah RH SIP assumed that Carbon would still be operating and emitting SO₂ when it

⁸⁵ Refer to the Staff Report, Table 6, Implementation Schedule.

⁸⁶ Hunter Power Plant Approval Order: Installation of Pollution Control Equipment, Established Plantwide Applicability Limitations and Approval Orders Consolidation, Emery County—CDS A; NSPS; PSD; Title IV; Title V Major; HAPs, March 13, 2018; Huntington Plant Approval Order: Installation of Pollution Control Equipment and Establishing Plant-wide Applicability Limitations, Emery County; CDS A; NSPS (Part 60), PSD, Title IV (Part 72/Acid Rain), Title V (Part 70), Project Number: N010238-0019 (August 6, 2009).

⁸⁷ Letter from Utah Department of Environmental Quality, Division of Air Quality, to PacifiCorp, Re: Revocation of Approval Order DAQE-ANO 100810005-08 dated May 16, 2008, Project Number: N10081-0007, January 8, 2016.

⁸⁸ See Memorandum from Lydia Wegman and Peter Tsigiotis, 2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM_{2.5}, and Regional Haze Programs, November 18, 2002. https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20021118_wegman_2002_base_year_emission_sip_planning.pdf.

⁸³ *WildEarth Guardians v. EPA*, 770 F.3d 919, 934 (10th Cir. 2014).

⁸⁴ 40 CFR 51.308(e)(2)(iii).

modeled the 2018 SO₂ milestone; the modeling also included NO_x and PM emissions from the Carbon plant. Thus, WRAP did not rely on post-2002 emission reductions from the Carbon plant in establishing the 2018 SO₂ milestone.

The State's SIP also includes SO₂ trend data that further demonstrate emission reductions from the Carbon plant are most likely not needed for meeting the three-state 2018 milestone of 141,849 tpy. Actual emissions in the three-state region are calculated each year and compared to the milestones. As can be seen in Table 6 above, SO₂ emissions reported each year since 2011 were below the 2018 milestone and the most recent milestone report for 2016 demonstrates that SO₂ emissions are currently 36 percent lower than the 2018 milestone. The Carbon plant was fully operational in the years 2012–2014 when the emissions from the three-state region were below the milestone for those years. In its amendments to the Backstop Trading Program to ensure there would be no double-counting of SO₂ emission reductions from the Carbon plant closure, the State attributed 8,005 tons of SO₂ emissions to the Carbon plant for purposes of demonstrating that even if Carbon continued to emit at that level, the three-state region would still be well below the 2018 Milestone. Therefore, the SO₂ emission reductions from the closure of the Carbon plant are surplus to what is needed to meet the 2018 milestone established in Utah's RH SIP, and can therefore be credited to the Utah NO_x BART Alternative.

As discussed above in section III.B.7, the amendments to the applicability provisions of State rule R307–150–3, Emissions Inventories, Applicability, ensure that there is no double counting SO₂ emissions reductions for the Carbon plant closure under both the 40 CFR 51.308 and 309 programs.

We propose to concur that the reductions from Carbon are surplus and can be considered as part of an alternative strategy under 40 CFR 51.308(e)(2)(iv). We also propose to approve Utah's revision to R307–150–3, amending the SO₂ emissions reported under the milestone, which ensures that these reductions are not double counted.

C. Monitoring, Recordkeeping, and Reporting

EPA has reviewed the MRR measures in Utah's July 3, 2019 SIP submittal, as supplemented on December 3, 2019, which revises Section IX, Part H, of Utah's SIP, and which apply for units subject to the NO_x BART Alternative

and PM BART. EPA proposes to approve these measures as meeting the requirements of section 110(a)(2) of the CAA and 40 CFR part 51, subpart K, Source Surveillance, and 40 CFR part 51, appendix V. Generally, these provisions require that SIPs must contain enforceable emission limitations and schedules for compliance, including MRR provisions that allow for the enforcement of those emission limitations. EPA previously approved state rule provisions that Utah has cross-referenced in these new regional haze measures, including terms, conditions and definitions in R307–101–1 (General Requirements—Forward), R307–101–2 (General Requirements—Definitions), and R307–170–4 (Continuous Emission Monitoring Program—Definitions), as well as other continuous emission monitoring system (CEMS) requirements referenced in R307–107. These measures contain the requirements that were missing from Utah's prior regional haze submittals⁸⁹ and are furthermore consistent with similar MRR requirements that EPA has approved for other states RH SIPs or that we have adopted in federal implementation plans.⁹⁰ As described above in section III.C, Utah has provided the emission limitations, MRR requirements for all the units that are part of Utah's BART Alternative for the Hunter, Huntington, and Carbon plants, and we are proposing to approve these provisions as satisfying CAA section 110(a)(2), 40 CFR part 51, subpart K, and 40 CFR part 51, appendix V with regard to MRR requirements to make emission limitations in the SIP practically enforceable.

D. Consultation With FLMs

On December 19, 2018, the State provided the opportunity for the FLMs to review the preliminary draft SIP documents. This was approximately 120 days prior to the public hearing that was held on April 17, 2019, and prior to the public comment period for the proposed SIP revisions submitted to EPA in July 2019, which ran from April 1 through May 15, 2019. The FLMs did not submit comments prior to or during the public comment period. Copies of the correspondence documenting the State's outreach to the FLMs are included in the docket. We propose to find that Utah has met the requirements of 40 CFR 308(i)(2).

⁸⁹ 77 FR 74365–74366 (Dec. 14, 2012).

⁹⁰ See, e.g., 77 FR 57864 (Sept. 18, 2012); 79 FR 5032 (Jan. 30, 2014).

V. Clean Air Act Section 110(I)

Under CAA section 110(I), the EPA cannot approve a plan revision “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”⁹¹ We propose to find that these revisions satisfy section 110(I). The previous sections of the notice explain how the proposed SIP revision and FIP withdrawal will comply with applicable regional haze requirements and general implementation plan requirements such as enforceability. With respect to requirements concerning attainment and reasonable further progress, the Utah Regional Haze SIP, as revised by this action, will allow for greater NO_x emissions at the four subject-to-BART units as compared to the 2016 FIP (which is currently judicially stayed). The change in these emissions compared to the FIP, however, is not anticipated to interfere with any applicable requirements under the CAA. The geographic area where the BART units are located is not part of a nonattainment area for any National Ambient Air Quality Standards (NAAQS). The approved portions of the PM_{2.5} attainment demonstrations and clean data determinations (CDD) for the Salt Lake City, Provo, and Logan, UT–ID nonattainment areas (NAAs) do not rely on the installation of SCR at Hunter or Huntington to achieve attainment of the NAAQS. Similarly, the approved PM₁₀ attainment demonstrations for Salt Lake County and Utah County NAAs, and CDD for Ogden City NAA do not rely on the installation of SCR at Hunter or Huntington to achieve attainment of the NAAQS. In addition, there are no other approved attainment demonstrations in other areas of the State or outside of the State that rely on the installation of SCR at Hunter or Huntington to achieve attainment of any of the NAAQS.

⁹¹ Note that “reasonable further progress” as used in CAA section 110(I) is a reference to that term as defined in section 301(a) (i.e., 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under CAA section 109. This term as used in section 110(I) (and defined in section 301(a)) is *not* synonymous with “reasonable progress” as that term is used in the regional haze program. Instead, section 110(I) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are “other applicable requirement[s]” of the Clean Air Act.

VI. The EPA's Proposed Action

A. 2019 Utah Regional Haze SIP Revision

We are proposing to approve these aspects of the 2019 Utah RH SIP revisions:

- NO_x BART Alternative, including NO_x emission reductions from Hunter Units 1, 2, and 3 and Huntington Units 1 and 2, and SO₂, NO_x and PM emission reductions from Carbon Units 1 and 2.
- A NO_x emission limit of 0.26 lb/MMBtu (30-day rolling average) each for Hunter Units 1 and 2 and Huntington 1 and 2.
- A NO_x emission limit of 0.34 lb/MMBtu (30-day rolling average) for Hunter Unit 3.
- A requirement to permanently close and cease operation of the Carbon power plant by August 15, 2015.
- The associated amendments to the SO₂ milestone reporting requirements.
- MRR requirements for units subject to the NO_x BART Alternative and the PM BART emission limits.

We also note that the regulatory text amendments contained in this notice include incorporation of additional parts of SIP section XX (XX.B–C and XX.E–N) and section XXIII, which were not addressed in this proposed action. EPA approved these SIP sections as meeting the requirements of the CAA and applicable regulations in previous actions;⁹² however, we inadvertently did not incorporate all approved sections in 40 CFR 52.2320(e). We are remedying this oversight and reorganizing 40 CFR 52.2320(e) to better reflect the structure of Utah's SIP submissions here; however, we are not reopening any of these previously approved SIP sections for comment.

Finally, contingent on our approval of Utah's July 2019 and December 2019 SIP submissions, we propose to find that Utah's SIP fully satisfies the requirements of section 309 of the RHR and therefore the State has fully complied with the requirements for reasonable progress, including BART, for the first implementation period.

B. FIP Withdrawal

Because we are proposing to find that Utah's July 2019 and December 2019 SIP submissions satisfy the NO_x BART and MRR requirements currently addressed by EPA's 2016 FIP, we are also proposing to withdraw in whole the Utah Regional Haze FIP at 40 CFR 52.2336 that imposes NO_x BART requirements on Hunter Units 1 and 2 and Huntington Units 1 and 2.

C. Clean Air Section 110(l)

We are proposing to find that an approval of the 2019 Utah RH SIP revisions and concurrent withdrawal of the corresponding the FIP, as proposed, complies with the CAA's 110(l) provisions.

We are requesting comment on the proposed actions in section VI.A–C, *i.e.*, on our proposed approval of Utah's NO_x BART Alternative and of the MRR elements for the units subject the BART Alternative and to PM BART. We are not reopening or requesting comment on any of the previously approved elements of Utah's regional haze SIP, except to the extent expressly reopened in this notice. If we finalize our approval of the July 2019 and December 2019 regional haze SIP submissions, Utah's regional haze SIP for the first implementation period will be fully approved.

VII. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the SIP amendments described in Sections III.A and VI.A of this preamble and set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (refer to docket EPA–R08–OAR–2015–0463) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

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

This action is not a “significant regulatory action” under the terms of Executive Order 12866⁹³ and was therefore not submitted to the Office of Management and Budget (OMB) for review. This proposed rule applies to only 7 units at three facilities in Utah that are individually named in this action. It is therefore not a rule of general applicability.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this

action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).⁹⁴ A “collection of information” under the PRA means “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.”⁹⁵ Because this proposed rule revises regional haze requirements reporting requirements for three facilities, the PRA does not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act 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. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this rule.

⁹² 73 FR 16543 (Mar. 28, 2008); 77 FR 74355 (Dec. 14, 2012); 78 FR 4072 (Jan. 18, 2013); 81 FR 43894 (July 5, 2016).

⁹³ 58 FR 51735, 51738 (October 4, 1993).

⁹⁴ 44 U.S.C. 3501 *et seq.*

⁹⁵ 5 CFR 1320.3(c) (emphasis added).

E. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with “Federal mandates” that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory actions with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, the EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million⁹⁶ by state, local, or tribal governments or the private sector in any one year. The proposed revisions to the 2014 FIP would reduce private sector expenditures. Additionally, we do not foresee significant costs (if any) for state and local governments. Thus, because the proposed revisions to the 2014 FIP reduce annual expenditures, this

proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Executive Order 13132, *Federalism*,⁹⁷ revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.”⁹⁸ “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”⁹⁹ Under Executive Order 13132, the EPA may not issue a regulation “that has federalism implications, that imposes substantial direct compliance costs, . . . and that is not required by statute, unless [the federal government provides the] funds necessary to pay the direct [compliance] costs incurred by the State and local governments,” or the EPA consults with state and local officials early in the process of developing the final regulation.¹⁰⁰ The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the final regulation.

This action does not have federalism implications. The proposed FIP revisions will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

⁹⁷ 64 FR 43255, 43255–43257 (August 10, 1999).

⁹⁸ 64 FR 43255, 43257.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”¹⁰¹ This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. Section 12(d) of NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to consider and use “voluntary consensus standards” in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to

⁹⁶ Adjusted to 2019 dollars, the UMRA threshold becomes \$164 million.

¹⁰¹ 65 FR 67249, 67250 (November 9, 2000).

provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898, establishes federal executive policy on environmental justice.¹⁰² Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

I certify that the approaches under this proposed rule will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or

indigenous/tribal populations. As explained previously, the Utah Regional Haze SIP, as revised by this action, will ensure a significant reduction in emissions compared to regional haze baseline levels (2002). In addition, the area where the Hunter, Huntington, and Carbon power plants are located has not been designated nonattainment for any NAAQS. The proposed SIP revisions will not create a disproportionately high and adverse human health or environmental effect on minority, low-income, or indigenous/tribal populations. The EPA, however, will consider any input received during the public comment period regarding environmental justice considerations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: January 9, 2020.

Gregory Sopkin,
Regional Administrator, Region 8.

For the reasons set forth in the preamble, 40 CFR part 52 is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart TT—Utah

■ 2. Section 52.2320 paragraph (c) is amended as follows:

■ a. Under the heading “R307–110. General Requirements: State Implementation Plan,” revise the table entry “R307–110–17.”

■ b. Under the heading “R307–110. General Requirements: State Implementation Plan,” add, in numerical order, the table entry “R307–110–28.”

■ c. Under the heading “R307–150. Emission Inventories,” revise the table entry “R307–150–3.”

The amendments read as follows:

§ 52.2320 Identification of plan.

* * * * *
(c) * * *

| Rule No. | Rule title | State effective date | Final rule citation, date | Comments |
|--|---|----------------------|--|----------|
| R307–110. General Requirements: State Implementation Plan | | | | |
| R307–110–17 | Section IX. Control Measures for Area and Point Sources, Part H, Emission Limits. | 11/25/2019 | [Insert Federal Register citation] 1/22/2020. | |
| R307–110–28 | Section XX. Regional Haze | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| R307–150. Emission Inventories | | | | |
| R307–150–3 | Applicability | 6/25/2019 | [Insert Federal Register citation] 1/22/2020. | |

■ 3. In § 52.2320 amend paragraph (e) by:
■ a. Under the heading “IX. Control Measures for Area and Point Sources,” adding, in numerical order, table entries “IX.H.21. General Requirements:

Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements,” and “IX.H.22. Source Specific Emission Limitations: Regional Haze

Requirements, Best Available Retrofit Technology.”
■ b. Under the heading “XVII. Visibility Protection,” removing the table entries “Section XX.D.6. Best Available Retrofit Technology (BART) Assessment for

¹⁰² 59 FR 7629 (February 16, 1994).

NO_x and PM,” and “Section XX.G. Long-Term Strategy for Fire Programs.”
 ■ c. Adding a centered heading “XX. Regional Haze” after the table entry “Section XXIII. Interstate Transport.”
 ■ d. Under the heading “XX. Regional Haze” adding the table entries “Section XX.A. Executive Summary,” “Section XX.B. Background on the Regional Haze Rule,” “Section XX.C. Long-Term Strategy for the Clean-Air Corridor,” “Section XX.D. Long-Term Strategy for Stationary Sources,” “Section XX.E.

Sulfur Dioxide Milestones and Backstop Trading Program,” “Section XX.F. Long-Term Strategy for Mobile Sources,” “Section XX.G. Long-Term Strategy for Fire Programs,” “Section XX.H. Assessment of Emissions from Paved and Unpaved Road Dust,” “Section XX.I. Pollution Prevention and Renewable Energy Programs,” “Section XX.J. Other GCVTC Recommendations,” “Section XX.K. Projection of Visibility Improvement Anticipated from Long-Term Strategy,” “Section XX.L. Periodic

Implementation Plan Revisions,” “Section XX.M. State Planning/ Interstate Coordination and Tribal Implementation,” and “Section XX.N. Enforceable Commitments for the Utah Regional Haze SIP.”

The revisions and additions read as follows:

§ 52.2320 Identification of plan.
 * * * * *
 (e) * * *

| Rule title | State effective date | Final rule citation, date | Comments |
|--|----------------------|---|----------|
| * * * * * | | | |
| IX. Control Measures for Area and Point Sources | | | |
| * * * * * | | | |
| IX.H.21. General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements. | 11/25/2019 | [Insert Federal Register citation] 1/22/2020. | |
| IX.H.22. Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology. | 11/25/2019 | [Insert Federal Register citation] 1/22/2020. | |
| * * * * * | | | |
| Section XXIII. Interstate Transport | 2/9/2007 | 73 FR 16543, 3/28/2008 | |
| XX. Regional Haze | | | |
| Section XX.A. Executive Summary | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.B. Background on the Regional Haze Rule | 8/15/2019 | [Insert Federal Register citation] 1/22/2020 | |
| Section XX.C. Long-Term Strategy for the Clean-Air Corridor | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.D. Long-Term Strategy for Stationary Sources | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.E. Sulfur Dioxide Milestones and Backstop Trading Program. | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.F. Long-Term Strategy for Mobile Sources | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.G. Long-Term Strategy for Fire Programs | 4/7/2011 | 78 FR 4071, 1/18/2013 | |
| Section XX.H. Assessment of Emissions from Paved and Unpaved Road Dust. | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.I. Pollution Prevention and Renewable Energy Programs. | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.J. Other GCVTC Recommendations | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.K. Projection of Visibility Improvement Anticipated from Long-Term Strategy. | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.L. Periodic Implementation Plan Revisions | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.M. State Planning/Interstate Coordination and Tribal Implementation. | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| Section XX.N. Enforceable Commitments for the Utah Regional Haze SIP. | 8/15/2019 | [Insert Federal Register citation] 1/22/2020. | |
| * * * * * | | | |

§ 52.2336 [Removed]

■ 4. Remove § 52.2336.

[FR Doc. 2020-00495 Filed 1-21-20; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 2, 90, and 97**

[WT Docket No. 19–348; FCC 19–130; FRS 16397]

Facilitating Shared Use in the 3.1–3.55 GHz Band**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: In this document, a Notice of Proposed Rulemaking (NPRM) proposes to remove the existing non-federal secondary radiolocation and amateur allocations in the 3.3–3.55 GHz band and to relocate incumbent non-federal operations out of the band, in order to prepare the band for possible expanded commercial wireless use. Specifically, the NPRM would eliminate the non-federal radiolocation services allocation in the 3.3–3.55 GHz band and the non-federal amateur allocation in the 3.3–3.5 GHz band. This NPRM also seeks comment on appropriate relocation options for incumbent non-federal users, either to the 3.1–3.3 GHz band or to other frequencies, on the transition mechanism and process for relocating existing non-federal users, and on potential relocation costs and considerations. The proposals in the NPRM are an initial step toward potential future shared use between federal operations and flexible use commercial services, consistent with the Commission’s responsibilities specified in the MOBILE NOW Act to identify spectrum for new mobile and fixed wireless use and to work in consultation with the National Telecommunications and Information Administration (NTIA) to evaluate the feasibility of allowing commercial wireless services to share use of spectrum between 3.1 and 3.55 GHz.

DATES: Interested parties may file comments on or before February 21, 2020; and reply comments on or before March 23, 2020.

ADDRESSES: You may submit comments, identified by WT Docket No. 19–348, by any of the following methods:

- *Federal Communications Commission’s website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov

or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Mary Claire York of the Wireless Telecommunications Bureau, Mobility Division, (202) 418–2205 or MaryClaire.York@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this NPRM, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or Cathy.Williams@fcc.gov or email PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM), WT Docket No. 19–348; FCC 19–130, adopted on December 12, 2019 and released on December 16, 2019. The full text of this document is available at <https://docs.fcc.gov/public/attachments/FCC-19-130A1.pdf>.

Synopsis

MOBILE NOW Act and Current Allocations. Congress addressed the pressing need for additional spectrum for wireless broadband in the Fiscal Year 2018 omnibus spending bill, signed into law in March 2018, which includes the MOBILE NOW Act under Title VI of RAY BAUM’S Act. Consolidated Appropriations Act, 2018, Public Law 115–141, Division P, the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM’S) Act, Title VI (the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act or MOBILE NOW Act). In light of the importance of making spectrum available for new technologies and maintaining America’s leadership position in the future of communications technology, the Act mandates that the Secretary of Commerce, working through NTIA: (1) Submit, in consultation with the Commission and the head of each affected Federal agency (or a designee thereof), a report by March 23, 2020 on the feasibility of “allowing commercial wireless service, licensed or unlicensed, to share use of the frequencies between 3100 megahertz and 3550 megahertz,” and (2) identify with the Commission “at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use” by December 31, 2022. With respect to this second obligation of NTIA and the

Commission, the Act further specifies that not less than “100 megahertz below the frequency of 6000 megahertz shall be identified for use on an exclusive, licensed basis for commercial mobile use, pursuant to the Commission’s authority to implement such licensing in a flexible manner” and “subject to potential continued use of such spectrum by incumbent Federal entities in designated geographic areas” in accordance with specified terms of the Act and not less than “100 megahertz below the frequency of 8000 megahertz shall be identified for use on an unlicensed basis.” Id. §§ 605(a), § 603(a)(1), 603(a)(2)(B).

Of the frequencies between 3100 MHz and 3550 MHz, NTIA has identified the top 100 megahertz in the 3.45–3.55 GHz band as the most promising portion for sharing in the near term and is conducting a feasibility assessment in collaboration with the Department of Defense (DOD), and continues to study the feasibility of sharing in the entire 3.1–3.55 GHz band with existing and future Federal users. The report on the 3.1–3.55 GHz band must include: “(1) [a]n assessment of the operations of Federal entities that operate Federal Government stations authorized to use the frequencies . . .”; (2) “[a]n assessment of the possible impacts of such sharing on Federal and non-Federal users already operating on the frequencies . . .”; (3) “[t]he criteria that may be necessary to ensure shared licensed or unlicensed services would not cause harmful interference to Federal or non-Federal users already operating in the frequencies . . .” and (4) “[i]f such sharing is feasible, an identification of which of the frequencies described in that subsection are most suitable for sharing with commercial wireless services through the assignment of new licenses by competitive bidding, for sharing with unlicensed operations, or through a combination of licensing and unlicensed operations.” Once NTIA has submitted the report, “[t]he Commission, in consultation with the NTIA, shall seek public comment on the report[.] . . .” Id. §§ 605(c), (d).

Currently, the entire 3.1–3.55 GHz band is allocated for both Federal and non-federal radiolocation services, with non-federal users operating on a secondary basis to Federal radiolocation services, which have a primary allocation. 47 CFR 2.106 and US108, 90.103(b), (c)(12). The Federal radiolocation allocation is one piece of

a broader Federal primary allocation for radiolocation in the 2.9–3.65 GHz band. 47 CFR 2.106. The DOD operates high-powered defense radar systems on fixed, mobile, shipborne, and airborne platforms in this band. These radar systems are used in conjunction with weapons control systems and for the detection and tracking of air and surface targets. The DOD also operates radar systems used for fleet air defense, missile and gunfire control, bomb scoring, battlefield weapon locations, air traffic control, and range safety.

In addition, the 3.3–3.5 GHz band is allocated for non-federal amateur use and the 3.5–3.55 GHz band is allocated for Federal aeronautical radionavigation services. *Id.* Between 3.3 and 3.55 GHz, there are only eight active licenses being used for a variety of commercial and industrial radiolocation services, such as doppler radar to provide weather information to broadcast viewers. Non-federal transmitters operating between 3.3–3.5 GHz are limited to survey operations and cannot exceed a peak power of 5 watts into the antenna. From 3.1–3.3 GHz, the band is allocated for space research (active) and earth exploration satellite (active) in addition to radiolocation services. *Id.* There are 17 non-federal radiolocation licenses below 3.3 GHz, held by power companies and municipalities.

Among the non-federal users already operating on these frequencies are hundreds of experimental licenses, including special temporary authorizations (STAs), active throughout the 3.1–3.55 GHz band. Experimental STAs may be requested for operation of a conventional experimental radio service station for a temporary period of no longer than six months. 47 CFR 5.54(a)(2), 5.61. A current list of active experimental authorizations throughout the 3.1–3.55 GHz band can be found via the Office of Engineering and Technology's Experimental Licensing System Generic Search, available at <https://apps.fcc.gov/oetcf/els/reports/GenericSearch.cfm>. These licenses and STAs, pursuant to part 5 of the Commission's rules, may be granted for a broad range of research and experimentation purposes but such operations are on a non-interference basis (*i.e.*, if an experimental facility should cause interference, the licensee is required to discontinue operation. 47 CFR 5.3, 5.84. Many of the recurring STAs in the band enable short-term use of these or other frequencies to add additional capacity during sporting events.

In light of the statutory provisions contained in the MOBILE NOW Act, the Wireless Telecommunications Bureau in

February 2019 imposed a freeze on accepting and processing applications for new or expanded part 90 Radiolocation Service operations in the 3.1–3.55 GHz band to “maintain a stable spectral environment in a band that is under active consideration for possible alternative use.” Temporary Freeze on Non-Federal Applications in the 3100–3550 MHz Band, WT Docket No. 19–39, Public Notice, 34 FCC Rcd 19 (WTB Feb. 22, 2019).

A. Removal of Non-Federal Allocations

In this NPRM, the Commission proposes to remove the non-federal allocations for the 3.3–3.55 GHz band and relocate incumbent non-federal users out of the band. The Commission notes that the 3.3–3.55 GHz band has been the focus for 5G use by standards setting organizations and in other countries, and the Commission thus believes our focus on this band would promote international harmonization. The Commission also notes that NTIA has identified the top 100 megahertz in the 3.45–3.55 GHz band as the most promising portion for making new spectrum available for commercial use, and therefore expects that band will be the Commission's first priority. The Commission also seeks comment on transition and protection mechanisms for non-federal incumbent operators.

The Commission proposes to eliminate the non-federal radiolocation services allocation in the 3.3–3.55 GHz band and the non-federal amateur allocation in the 3.3–3.5 GHz. Specifically, the Commission proposes to remove these non-federal allocations from the Table of Frequency Allocations in section 2.106 of the rules, 47 CFR 2.106, and make conforming rule changes in parts 90 and 97, 47 CFR parts 90 and 97. The proposed removal is an initial step toward potential future shared use between Federal operations and flexible use commercial services, in furtherance of the Commission's obligations under the MOBILE NOW Act to identify spectrum for mobile and fixed wireless use and to work with NTIA to evaluate this band for potential shared use. As the Commission has recognized in other proceedings, mid-band spectrum is well-suited for next generation wireless broadband services given the combination of favorable propagation characteristics (as compared to high bands) and the opportunity for additional channel reuse (as compared to low bands). As a general matter, the Commission considers clearing spectrum for flexible use to be a priority when it is feasible to do so. Where it has not been feasible, the Commission has attempted to

introduce sharing. As demonstrated by the commercial interest in the adjacent 3.5 GHz band, as well as the extensive use of experimental licenses and STAs operating in the 3.1–3.55 GHz band throughout 2019, flexible-use operations in the 3 GHz band hold substantial promise.

By taking the initial step needed to clear the band of allocations for non-federal incumbents, the Commission furthers its continued efforts to make more mid-band spectrum potentially available to support next generation wireless networks—consistent with the mandate of the MOBILE NOW Act. The Commission seeks comment on this proposal.

B. Future of Incumbent Non-Federal Operations

The Commission seeks comment on appropriate relocation options for incumbent non-federal users, either to the 3.1–3.3 GHz band or to other frequencies. Which other frequencies might be appropriate to accommodate the current and future uses of the band? Should the Commission consider different frequencies for different licensees depending on their specific needs? For example, are there different considerations that the Commission should take into account in considering alternate frequencies for the relatively low-power operations in the 3.3–3.5 GHz band and the high-power weather radar operations in the 3.5–3.55 GHz band? The Commission believes that moving the high-power weather radars in particular may benefit operations in the adjacent 3.55–3.7 GHz band by minimizing the potential for harmful interference from the non-federal radars to Citizens Broadband Radio Service operations.

The Commission seeks comment on relocating non-federal licensees to another band. What band would be most appropriate? For example, if relocated to the 3.1–3.3 GHz band, the Commission would propose that these licensees would continue to operate on a secondary basis to Federal operations, consistent with the current allocations in the band. The Commission seeks comment on whether this proposal is the most efficient and appropriate scheme for future use of the band and also seeks comment on how best to balance the interests of existing licensees in the 3.3–3.55 GHz band with potentially preparing the band for possible future shared use between Federal incumbents and commercial wireless services, if feasible. And the Commission seeks comment on how to ensure that non-federal secondary operations in the 3.1–3.3 GHz band will

continue to protect Federal radar systems. Commenters should precisely describe proposed approaches and explain the costs and benefits of their proposals.

With respect to amateur operations, is there sufficient existing amateur spectrum in other bands that can support the operations currently conducted in the 3.3–3.5 GHz band? The Commission notes that the 3.40–3.41 GHz segment is designated for communications to and from amateur satellites. 47 CFR 97.207–97.211. The Commission seeks comment on: The extent to which the band is used for this purpose, whether existing satellites can operate on other amateur satellite bands, and on an appropriate timeframe for terminating these operations in this band.

The Commission also seeks comment generally on the transition mechanism and process for relocating existing non-federal users. How can the Commission expedite and incentivize the transition of existing operations? What is a reasonable timeframe to transition the operations? Should these licenses sunset at the end of the existing license term, or at another date certain? What are the potential costs to non-federal incumbent licensees to relocate their operations to another band as compared to the benefits of preparing the band for future shared use? What technical characteristics of non-federal licensee's equipment should factor into our relocation considerations (e.g., tunability, bandwidth, operational power, etc.)? How should non-federal incumbent licensees be compensated for their relocation costs? Should their current status, i.e., secondary to Federal radiolocation services, factor into any relocation considerations, including cost reimbursement?

Procedural Matters

Ex Parte Rules. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and

arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Comment Filing Procedures. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445

12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. It requests written public comment on the IRFA, contained at Appendix B to the NPRM. Comments must be filed in accordance with the same deadlines as comments filed in response to the NPRM as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Paperwork Reduction Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small

business concerns with fewer than 25 employees.

Ordering Clauses

It is ordered, pursuant to the authority found in sections 1, 2, 4(i), 303, 316, and 1502 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 316, and 1502, and section 1.411 of the Commission's Rules, 47 CFR 1.411, that this Notice of Proposed Rulemaking *is hereby adopted*.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Table of Frequency Allocations, Telecommunications.

47 CFR Part 90

Radio.

47 CFR Part 97

Radio, Satellites.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 90, and 97 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Pages 40 and 41 are revised.

■ b. In the list of United States (US) Footnotes, footnote US108 is revised.

■ c. In the list of Federal Government (G) Footnotes, footnotes G2 and G59 are revised.

§ 2.106 Table of Frequency Allocations.

The revisions read as follows:

* * * * *

BILLING CODE 6712-01-P

| Table of Frequency Allocations | | 3500-5460 MHz (SHF) | | Page 41 | |
|---|---|--|---|---|---|
| | | International Table | | United States Table | |
| Region 1 Table (See previous page) | Region 2 Table | Region 3 Table | Federal Table | Non-Federal Table | FCC Rule Part(s) |
| | 3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431B Radiolocation 5.433 | 3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433 | 3500-3550 RADIOLOCATION AERONAUTICAL RADIONAVIGATION (ground-based) G110 | 3500-3550 | |
| 3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile | 3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.434 Radiolocation 5.433 | 3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation | RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 | 3550-3600 FIXED MOBILE except aeronautical mobile US105 US433 | Citizens Broadband (96) |
| | 3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile | 5.435 | US105 US107 US245 US433 3650-3700 | 3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433 | Satellite Communications (25) Citizens Broadband (96) |
| 4200-4400 AERONAUTICAL MOBILE (R) 5.436 AERONAUTICAL RADIONAVIGATION 5.438 | | | 4200-4400 AERONAUTICAL RADIONAVIGATION | 3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG457A | Satellite Communications (25) Fixed Microwave (101) |
| 5.437 5.439 5.440 4400-4500 FIXED MOBILE 5.440A 4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A | | | 5.440 US261 4400-4940 FIXED MOBILE | 4400-4500 | Aviation (87) |
| 4800-4990 FIXED MOBILE 5.440A 5.441B 5.442 Radio astronomy | | | US113 US245 US342 4940-4990 | 4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245 | |
| 5.149 5.339 5.443 4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) | | | 5.339 US342 US385 G122 4990-5000 RADIO ASTRONOMY US74 Space research (passive) | 4800-4940 US113 US342 4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385 | Public Safety Land Mobile (90Y) |
| 5.149 | | | US246 | | |

BILLING CODE 6712-01-C

* * * * *

United States (US) Footnotes

* * * * *

US108 In the band 10–10.5 GHz, survey operations, using transmitters with a peak power not to exceed five watts into the antenna, may be authorized for Federal and non-Federal use on a secondary basis to other Federal radiolocation operations.

* * * * *

Federal Government (G) Footnotes

* * * * *

G2 In the bands 216.965–216.995 MHz, 420–450 MHz (except as provided for in G129), 890–902 MHz, 928–942 MHz, 1300–1390 MHz, 2310–2390 MHz, 2417–2450 MHz, 2700–2900 MHz, 5650–5925 MHz, and 9000–9200 MHz, use of the Federal radiolocation service is restricted to the military services.

* * * * *

G59 In the bands 902–928 MHz, 3100–3300 MHz, 3550–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 13.4–14.0 GHz, 15.7–17.7 GHz and 24.05–24.25 GHz, all Federal non-military radiolocation shall be secondary to military radiolocation, except in the sub-band 15.7–16.2 GHz airport surface detection equipment (ASDE) is permitted on a co-equal basis subject to coordination with the military departments.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

§ 90.103 [Amended]

■ 4. In § 90.103, amend the table in paragraph (b) by removing the entries of “3300 to 3500” MHz and “3500 to 3550” MHz bands.

PART 97—AMATEUR RADIO SERVICE

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

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 6. In § 97.207, revise paragraph (c)(2) to read as follows:

§ 97.207 Space station.

* * * * *

(c) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 2400–2450 MHz, 5.83–5.85 GHz, 10.45–10.50 GHz, and 24.00–24.05 GHz segments.

* * * * *

■ 7. In § 97.209, revise paragraph (b)(2) to read as follows:

§ 97.209 Earth station.

* * * * *

(b) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

■ 8. In § 97.211, revise paragraph (c)(2) to read as follows:

§ 97.211 Space telecommand station.

* * * * *

(c) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

* * * * *

■ 9. In § 97.301, revise the table in paragraph (a) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) * * *

| Wavelength band | ITU Region 1 | ITU Region 2 | ITU Region 3 | Sharing requirements see § 97.303 (paragraph) |
|-----------------|---------------|---------------|---------------|---|
| | MHz | MHz | MHz | |
| VHF | | | | |
| 6 m | | 50–54 | 50–54 | (a). |
| 2 m | 144–146 | 144–148 | 144–148 | (a), (k). |
| 1.25 m | | 219–220 | | (l). |
| Do | | 222–225 | | (a). |
| UHF | | | | |
| 70 cm | 430–440 | 420–450 | 430–440 | (a), (b), (m). |
| 33 cm | | 902–928 | | (a), (b), (e), (n). |
| 23 cm | 1240–1300 | 1240–1300 | 1240–1300 | (b), (d), (o). |
| 13 cm | 2300–2310 | 2300–2310 | 2300–2310 | (d), (p). |
| Do | 2390–2450 | 2390–2450 | 2390–2450 | (d), (e), (p). |
| | GHz | GHz | GHz | |
| SHF | | | | |
| 5 cm | 5.650–5.850 | 5.650–5.925 | 5.650–5.850 | (a), (b), (e), (r). |
| 3 cm | 10.0–10.5 | 10.0–10.5 | 10.0–10.5 | (a), (b), (k). |
| 1.2 cm | 24.00–24.25 | 24.00–24.25 | 24.00–24.25 | (b), (d), (e). |
| EHF | | | | |
| 6 mm | 47.0–47.2 | 47.0–47.2 | 47.0–47.2 | |
| 4 mm | 76–81 | 76–81 | 76–81 | (c), (f), (s). |
| 2.5 mm | 122.25–123.00 | 122.25–123.00 | 122.25–123.00 | (e), (t). |
| 2 mm | 134–141 | 134–141 | 134–141 | (c), (f). |
| 1 mm | 241–250 | 241–250 | 241–250 | (c), (e), (f). |
| | Above 275 | Above 275 | Above 275 | (f). |

■ 10. In § 97.303, revise paragraphs (b) and (f) and remove and reserve paragraph (q) as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(b) Amateur stations transmitting in the 70 cm band, the 33 cm band, the 23 cm band, the 5 cm band, the 3 cm band, or the 24.05–24.25 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government in the radiolocation service.

* * * * *

(f) Amateur stations transmitting in the following segments must not cause harmful interference to radio astronomy stations: 76–81 GHz, 136–141 GHz, 241–248 GHz, 275–323 GHz, 327–371 GHz, 388–424 GHz, 426–442 GHz, 453–510 GHz, 623–711 GHz, 795–909 GHz, or 926–945 GHz. In addition, amateur stations transmitting in the following segments must not cause harmful interference to stations in the Earth exploration-satellite service (passive) or the space research service (passive): 275–286 GHz, 296–306 GHz, 313–356 GHz, 361–365 GHz, 369–392 GHz, 397–399 GHz, 409–411 GHz, 416–434 GHz, 439–467 GHz, 477–502 GHz, 523–527 GHz, 538–581 GHz, 611–630 GHz, 634–654 GHz, 657–692 GHz, 713–718 GHz, 729–733 GHz, 750–754 GHz, 771–776 GHz, 823–846 GHz, 850–854 GHz, 857–862 GHz, 866–882 GHz, 905–928 GHz, 951–956 GHz, 968–973 GHz and 985–990 GHz.

* * * * *

(q) [Reserved]

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§ 97.305 [Amended]

■ 11. In § 97.305, amend the SHF portion of the table in paragraph (c) by removing the entry of “9 cm band”.

[FR Doc. 2020–00535 Filed 1–21–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2018–0081; 4500030113]

RIN 1018–BD47

Endangered and Threatened Wildlife and Plants; Reclassification of the Humpback Chub From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the humpback chub (*Gila cypha*) from an endangered species to a threatened species on the Federal List of Endangered and Threatened Wildlife, due to partial recovery. Based on the best available scientific and commercial data, threats to the humpback chub identified at the time of listing have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species under the Endangered Species Act of 1973, as amended (Act), but is likely to become an endangered species within the foreseeable future. We also propose a rule issued under section 4(d) of the Act that is necessary and advisable to provide for the conservation of the humpback chub.

DATES: We will accept comments received or postmarked on or before March 23, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by March 9, 2020.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R6–ES–2018–0081, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2018–0081; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

Document availability: Supporting documentation used to prepare this proposed rule, including the 5-year review and the species status assessment (SSA) report, are available on the internet at <http://www.regulations.gov>

under Docket No. FWS–R6–ES–2018–0081. Additionally, supporting documentation is available for public inspection by appointment at our Upper Colorado River Endangered Fish Recovery Program Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Tom Chart, Director, U.S. Fish and Wildlife Service, Upper Colorado River Endangered Fish Recovery Program, P.O. Box 25486, DFC, Lakewood, CO 80225; telephone: 303–236–9885. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Reclassifying a species as an endangered or threatened species can only be completed by issuing a rule.

This rule proposes to reclassify the humpback chub from endangered to threatened (i.e., to “downlist” the species) on the Federal List of Endangered and Threatened Wildlife, with a rule issued under section 4(d) of the Act, based on the species’ current status, which has been improved through implementation of conservation actions. This proposed rule and the associated species status assessment (SSA) report reassess all available information regarding the status of and threats to the humpback chub.

The basis for our action. Under the Act, we determine whether a species is an “endangered species” or “threatened species” based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. For the reasons discussed below, we believe the humpback chub no longer meets the Act’s definition of an endangered species, but does meet the Act’s definition of a threatened species. The actions of multiple conservation partners over the past 30 years have improved the condition of humpback

chub and reduced the threats to the species.

Over the last few decades, management programs implemented by a variety of partners and stakeholders in the Colorado River basin delivered natural flow regimes; provided suitable water temperatures; and managed predatory, nonnative fish species to improve habitat conditions for the humpback chub. These programs improved habitat resource conditions such that the humpback chub now has multiple, resilient populations, including a large, stable population in the Grand Canyon and four persisting populations upstream of Lake Powell. Therefore, conditions have improved, and the species now has sufficient resiliency, redundancy, and representation such that it is not currently at risk of extinction throughout its range (*i.e.*, it does not meet the Act's definition of an endangered species). However, in the future, management of the species and the conditions of the resources required by the species are likely to change such that the species is likely to become an endangered species in the foreseeable future (*i.e.*, the species meets the Act's definition of threatened).

Supporting analyses. We conducted an SSA for the humpback chub, with input and information provided by a variety of partners and stakeholders. The results of this assessment are contained in an SSA report, which represents a compilation of the best scientific and commercial data available concerning the status of the species, including the past, present, and future stressors to this species (Service 2018b, entire). Additionally, the SSA report contains our analysis of required habitat and the existing conditions of that habitat.

Peer review. We sought comments from independent specialists on our SSA report for the humpback chub to ensure that we based our listing determination on scientifically sound data, assumptions, and analyses. We received feedback from three experts that have knowledge and/or experience with the species or similar species biology as peer review of the SSA report. The reviewers were generally supportive of our approach and made suggestions and comments that strengthened our analysis. We incorporated these comments into the SSA report, which can be found at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2018-0081.

Information Requested

Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. The comments that will be most useful and likely to inform our decisions are those supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. We particularly seek comments concerning:

(1) Reasons we should or should not reclassify the humpback chub as a threatened species.

(2) New information on the historical and current status, range, distribution, and population size of the humpback chub.

(3) New information on the known and potential threats to the humpback chub, including flow regimes and predatory, nonnative fish.

(4) New information regarding the life history, ecology, and habitat use of the humpback chub.

(5) Current or planned activities within the geographic range of the humpback chub that may impact or benefit the species.

(6) The appropriateness of a rule issued under section 4(d) of the Act (a "4(d) rule") to allow certain actions to take humpback chub.

(7) Any additional actions that we should consider for inclusion in a 4(d) rule, especially research, monitoring, and additional management and restoration activities.

(8) Any additional information pertaining to the promulgation of a 4(d) rule to allow certain actions that may take humpback chub.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to

whether any species is an endangered or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Upper Colorado River Endangered Fish Recovery Program Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), the Service's August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the humpback chub SSA report. Results of this structured peer review process can be found at <https://www.fws.gov/mountain-prairie/science/peerReview.php>. The SSA report was also submitted to our

Federal, State, and Tribal partners for scientific review. In preparing this proposed rule, we incorporated the results of these reviews in the final SSA report, as appropriate, which is the foundation for this proposed rule.

Previous Federal Actions

By the time the humpback chub was scientifically described between the 1940s and 1970s, the Colorado River ecosystem supporting the species had been greatly altered by large dams; smaller agricultural irrigation diversions; substantial water depletions for municipal and agricultural uses; and predatory, nonnative fish species. By the 1960s, researchers concluded that the humpback chub was likely in decline; they suspected extirpation of a population near Hoover Dam, constructed in the 1930s, and they predicted possible extirpation resulting from the construction of Glen Canyon and Flaming Gorge Dams in the 1960s. Therefore, on March 11, 1967, the Secretary of the Interior published a final rule (32 FR 4001) listing the humpback chub as an endangered species in accordance with the Endangered Species Preservation Act of 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). Subsequently, the humpback chub retained classification as an endangered species under the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa) and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and on January 4, 1974, the species was included in a final rule (39 FR 1158) establishing a list of endangered native wildlife at 50 CFR part 17.

We issued the first recovery plan for humpback chub on August 22, 1979; that document described the primary reasons for the decline of humpback chub as numerous flow and habitat alterations caused by the construction and operation of several large Colorado River basin dams, including the Flaming Gorge, Glen Canyon, and Hoover Dams. The 1979 recovery plan also recognized the possible impacts to humpback chub from hybridization with other native chub species and from competition with nonnative fish species. We revised the recovery plan on September 19, 1990, and we further amended and supplemented the 1990 revised plan with new recovery goals on August 1, 2002. The 2002 recovery goals provided objective and measurable demographic and threats-based recovery criteria, site specific recovery actions, and estimates of time needed to implement the recovery actions for two recovery units, the upper and lower basins, which are physically demarcated by Glen Canyon

Dam and have unique demographic trends and management actions. The 2002 recovery goals lacked estimates of cost needed for recovery, and were withdrawn by court order on January 18, 2006, (*Grand Canyon Trust et al. v. Gale Norton et al.*, No. 04–CV–636–PHX–FJM). The adequacy of the recovery goals, however, was not reviewed by the court, because the court found that the plaintiffs could not challenge an alleged failure for a recovery plan to provide for the conservation of the species. The recovery criteria presented in the 2002 recovery plan remain reasonable measures to gauge progress towards recovery and a valuable reference as we refine our vision of recovery for the humpback chub, and work to update the recovery plan.

Humpback chub inhabit discrete canyon areas of the Colorado River basin characterized by swift currents and rocky habitats, including portions of the Yampa, Green, and Colorado rivers. On March 21, 1994, we designated critical habitat for the species along 610 kilometers (km) (379 miles (mi)) of the Colorado River basin (59 FR 13374). Designated critical habitat units include Dinosaur National Monument (the Yampa and Green rivers in Utah and Colorado), Desolation and Gray Canyons (the Green River in Utah), Black Rocks, and Westwater Canyon (the Colorado River in Utah and Colorado), Cataract Canyon (the Colorado River in Utah), and Grand Canyon (the Colorado and Little Colorado rivers in Arizona).

We completed a status review (“5-year review”) under section 4(c)(2)(A) of the Act for humpback chub on March 19, 2018 (Service 2018a). The 5-year review recommended that the humpback chub be downlisted (*i.e.*, reclassified from an endangered to a threatened species), which prompted this proposed rule.

Background

A thorough review of the taxonomy, range and distribution, life history, and ecology of the humpback chub is presented in the SSA report (Service 2018b, pp. 5–12; available at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2018–0081), and is briefly summarized here. The humpback chub is a fish endemic to the warm-water portions of the Colorado River basin of the southwestern United States. Humpback chub live in discrete, rocky, canyon-bound river reaches characterized by swift currents in portions of Utah, Colorado, and Arizona. Multiple adaptations allow humpback chub to survive the highly

variable flow conditions of these desert river ecosystems, such as a long lifespan of approximately 20 to 40 years, large body size up to 480 millimeters (mm) (19 inches (in)), high reproductive potential by producing up to 2,500 eggs per year, tolerance to a wide range of water qualities, and a variable diet.

The species is known from eight historical canyon locations. Two populations, Hideout Canyon (the Green River in Utah) and Black Canyon (the Colorado River in Arizona and Nevada), were extirpated following the construction of Flaming Gorge and Hoover Dams, and their associated reservoirs, respectively. The continued operation of these dams make these habitats currently inhospitable to humpback chub. An additional population, Dinosaur National Monument (the Yampa and Green rivers in Utah and Colorado), declined after the construction of Flaming Gorge Dam and became extirpated in the mid-2000s. Although the species is considered extirpated, or absent from this geographic location, Dinosaur National Monument could possibly still support humpback chub and therefore the SSA report considered the area as an unoccupied habitat unit. The species is currently monitored at the remaining five extant, or occupied, locations: Desolation and Gray Canyons (the Green River in Utah), Black Rocks (the Colorado River in Colorado), Westwater Canyon (the Colorado River in Utah), Cataract Canyon (the Colorado River in Utah), and Grand Canyon (the Colorado and Little Colorado rivers in Arizona). The Dinosaur National Monument, Desolation and Gray Canyons, Black Rocks, Westwater Canyon, and Cataract Canyon populations are the “upper basin populations,” and the Grand Canyon population is the “lower basin population.”

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any of the factors set forth at section 4(a)(1) of the Act affecting the species’ continued existence. The SSA report provides a thorough account of the species’ overall viability (Service 2018b, entire). The SSA report documents the results of the comprehensive biological status review for the humpback chub and provides an account of the species’ overall viability through forecasting of the species’ condition in the future (Service 2018b, entire). In the SSA report, we summarized the relevant biological data and a description of past, present, and likely future stressors and

conducted an analysis of the viability of the species. In the SSA, we define viability as the ability of the species to persist over the long term and, conversely, to avoid extinction. In this discussion, we summarize the conclusions of that assessment, which can be accessed at Docket No. FWS–R6–ES–2018–0081 on <http://www.regulations.gov>.

To evaluate the biological status of the humpback chub both currently and into the future, we evaluated the overall viability of the humpback chub in the context of resiliency, redundancy, and representation (Smith *et al.* 2018, p. 306). Species viability, or the species' ability to sustain populations over time, is related to the species' ability to withstand catastrophic events (redundancy), the ability to adapt to changing environmental conditions (representation), and the ability of populations to withstand stochastic disturbances of varying magnitude and duration (resiliency). Species viability also depends on the likelihood of stressors that act to reduce a species' redundancy, representation, and resiliency and the species' overall ability to withstand such stressors in the future. Having a greater number (redundancy) of self-sustaining populations (resiliency) that are distributed (redundancy and representation) across the known range of the humpback chub would be associated with an overall higher viability of the species into the future.

Individual humpback chub need diverse, rocky, canyon river habitat for spawning, rearing, feeding, and sheltering; suitable river flow and water temperature regimes for spawning, egg incubation, larval development, and growth; and an adequate and reliable food supply, including aquatic and terrestrial insects, crustaceans, and plant material (Service 2018b, pp. 15–33). Populations of humpback chub need habitats with few predatory, nonnative fish species that allow the young to survive and recruit; suitable water quality with few toxic inputs, such as fire ash or other contaminants, to allow for survival of all life stages; and unimpeded range and connectivity between discrete canyon habitats that provides free movement of individuals among populations. At the species level, humpback chub needs multiple populations to provide adequate redundancy against potential catastrophic events and genetic diversity (representation) to ensure adaptive traits of the species (Service 2018b, pp. 15–33).

To evaluate the condition of humpback chub populations, we

evaluated a number of stressors that influence the resiliency of humpback chub populations, such as river flows and predatory, nonnative fish in the upper basin populations, and river flows, water temperature, food supply, and predatory nonnative fish in the lower basin population (Service 2018b, pp. 34–100). Some stressors, such as low river flows and warm water temperatures, may also act cumulatively to increase predatory, nonnative fish. Additionally, certain needs or stressors require continued management, such as river flow and nonnative fish in all five extant populations, and water temperature and food supply in the Grand Canyon population. Ongoing management actions are primarily undertaken by two multi-stakeholder management programs, the Upper Colorado River Endangered Fish Recovery Program (Upper Basin Recovery Program) and the Glen Canyon Dam Adaptive Management Program (Glen Canyon Dam AMP). Below, we summarize the conditions for the upper and lower basins.

The Upper Basin—In the upper basin, the four extant populations (Desolation and Gray Canyons, Black Rocks, Westwater Canyon, and Cataract Canyon) and one extirpated population (Dinosaur National Monument) currently have high-quality rocky canyon habitat, an adequate food base, and unimpeded connectivity. Federal, State, and tribal land ownership largely protects humpback chub's canyon habitats in the upper basin, and recreation is the primary activity in these canyons. Water temperature is suitable and unaltered by reservoir releases in the four extant populations, but a portion of the extirpated Dinosaur National Monument population in the Green River is cooled by releases from the Flaming Gorge Dam. Fish passage structures ensure that there are no impediments to movement between populations.

The resources of highest concern in the upper basin are river flows. Dam installations in the 20th century altered river flow regimes by reducing spring peak flows. Additionally, large municipal and agricultural depletions reduced the amount of water in the rivers. Since the early 2000s, management of river flows has restored much of the important intra- and inter-annual variability of river flow that the humpback chub needs to breed, feed, and shelter. Human demand for water has remained relatively the same over the last 20 years, but recent and ongoing drought has reduced river flows.

Another primary stressor in the upper basin is predatory, nonnative fish. Over

50 nonnative fish species have been introduced into the upper basin, some of which prey on or compete with young humpback chub, effectively reducing juvenile survival rates. Smallmouth bass (*Micropterus dolomieu*) are the largest concern because they prey on native fish (Johnson *et al.* 2008, p. 1946) and colonize humpback chub habitats. However, nearby populations of smallmouth bass have not colonized Black Rocks, Westwater Canyon, or Cataract Canyon. Smallmouth bass do inhabit Dinosaur National Monument and Desolation and Gray Canyons, and periodically increase in density by dispersing from nearby production areas. Low river flows and warm water temperatures may also act cumulatively to promote the expansion and establishment of predatory, nonnative fish.

The Upper Basin Recovery Program is responsible for overseeing the management actions needed to improve conditions for the humpback chub in the upper basin. Actions that the Upper Basin Recovery Program implements to support recovery of humpback chub include, but are not limited to: Providing and protecting river flows; managing and removing predatory, nonnative fish; and installing and operating fish passage structures. For example, within the past 15 years, both Flaming Gorge Dam (the Green River) and the Aspinall Unit (the Colorado River) changed release patterns to provide downstream flows to benefit the humpback chub. The Upper Basin Recovery Program also acquired water stored in reservoirs in the Yampa and Colorado rivers to support the humpback chub when needed, such as during low flow periods during the summer. The Upper Basin Recovery Program also implements nonnative fish management actions, such as removing predatory fish from approximately 966 km (600 mi) of river and screening reservoirs to prevent predators from escaping into the downstream habitats used by humpback chub. State partners in the Upper Basin Recovery Program no longer stock certain nonnative predators and instead implement harvest regulations that promote the removal of predatory fish throughout the upper basin. Finally, fish passage structures installed over the last 20 years in the Colorado and Green rivers allow the humpback chub to move between habitats.

Upper basin populations have been monitored using catch per unit effort (CPUE) protocols since the mid-1980s, but more rigorous mark-recapture population estimation techniques began

in some populations in the late 1990s. Abundance estimates generally have some uncertainty, with wide confidence intervals in older estimates. Despite the uncertainty associated with population monitoring techniques, these abundance estimates and associated CPUE data provide important demographic information about humpback chub populations.

The Black Rocks and Westwater Canyon populations declined from around 2000, when they were first estimated, through about 2006 (Service 2018b, p. 101). However, over the past 10 years both of these populations have stopped declining and have stabilized (Service 2018b, p. 101). The most recent preliminary estimates of the Black Rocks population, for years 2016 and 2017, indicate a stable population of around 425 to 450 adults (Francis *et al.* 2018, p. 21). The most recent preliminary estimates of the Westwater Canyon population, for years 2016 and 2017, indicate a stable population of around 2,800 adults (Hines 2017, p. 4; Hines 2018, pp. 12, 14). The preliminary estimates for both of these populations were released after the SSA report was complete, and although they have not yet undergone peer review, they are based on previously used and widely accepted modeling techniques, so are the best available science.

Adult abundance trends in Desolation and Gray Canyons are generally similar to those for Westwater and Black Rocks because they were highest around year 2000 and subsequently declined through about 2006 (Service 2018b, p. 101). However, estimates from 2001 to 2003 have low precision and are unreliable due to the difficulty of surveying these canyons. Using estimates from 2006 to 2015, the adult abundance estimates for Desolation and Gray Canyons show no conclusive pattern because estimates are too variable (Service 2018b, p. 109). Abundance estimates for the Desolation and Gray Canyons population were approximately 1,750 adults in 2014 and 2015 (Howard and Caldwell 2018, p. 18).

The Cataract Canyon population is small, with fewer than approximately 500 adults and swift currents make this population difficult to monitor. Abundance of humpback chub in Cataract Canyon is estimated by CPUE rather than more robust mark-recapture techniques, which makes estimating a population trend for Cataract Canyon difficult. Consistent catches of adult and young life stages indicate that this population persists. Monitoring efforts from 2017 documented the highest annual CPUE for humpback chub in

Cataract Canyon over the last 26 years (Ahrens 2017, p. 7). New sampling techniques documented an unprecedented number of juvenile chubs in Cataract Canyon, further indicating that this population persists (Ahrens 2017, p. 2). Although humpback chub and roundtail chub cannot be distinguished in the field when they are small, researchers assume that a meaningful amount of these young fish are humpback chub.

Unlike the other four populations in the upper basin, the Dinosaur National Monument population is currently below detection limits and is now considered functionally extirpated. By 1998, humpback chub were absent or rare in habitats where the species was likely common in the 1940s (Tyus 1998, p. 192), and the decline in the Dinosaur National Monument population likely was the result of the construction of the Flaming Gorge Dam. Humpback chub in the Green River portion of the Dinosaur National Monument population were negatively affected by the cold releases from the Flaming Gorge Dam starting in 1963, and the Yampa River portion was negatively affected by low river flows, especially in the early 2000s.

Operational changes since 2006 at Flaming Gorge Dam have improved the water temperature and flow conditions in the Green River, and releases from Elkhead Reservoir since 2006 support improved flow conditions in the Yampa River. Furthermore, the rocky canyon habitats that the humpback chub rely on in Dinosaur National Monument are still present. Although management actions have improved resource conditions in Dinosaur National Monument, immigration from other humpback chub populations is too low for the species to recolonize naturally, and the population is considered extirpated. Because habitats could potentially support a population, the Upper Basin Recovery Program is considering translocation or stocking to restore humpback chub to Dinosaur National Monument. Dinosaur National Monument may now have suitable resource conditions to support a re-establishment effort.

Summary of the Upper Basin—There are currently four extant populations of humpback chub in the upper basin and one extirpated population at Dinosaur National Monument. The Upper Basin Recovery Program's conservation and management actions have maintained and improved resource conditions for the four extant populations in the upper basin over the last 15 years. Monitoring data indicate that Black Rocks and Westwater Canyons have stabilized over the past decade and that the Cataract Canyon population persists and is likely

also stable. But the trend of the Desolation and Gray Canyons population is uncertain, with conflicting data indicating that the population is either stable or declining. In terms of habitats, improved river flows in the upper basin indicate that resource conditions are now of adequate quantity and quality to support populations. Although nonnative smallmouth bass have been documented near multiple populations of humpback chub, smallmouth bass have yet to establish in most humpback chub habitats.

The Lower Basin—Although the Grand Canyon population is the only population of humpback chub in the lower basin, this population includes: A core population area in the Little Colorado River and nearby mainstem Colorado River; multiple aggregations of humpback chub in the Colorado River downstream; and individuals translocated into tributary habitats in Havasu Creek and the upper Little Colorado River. The Grand Canyon population has high-quality canyon reaches that foster unimpeded connectivity between habitats. In this population, there are no barriers to movement except for those created by natural falls or chutes, and translocated humpback chub placed above these natural barriers helped improve connectivity. Landownership surrounding the Grand Canyon population is Federal and tribal, so access and use are well-regulated.

Releases from the Glen Canyon Dam alter the flow and temperature regimes of the Colorado River throughout much of the Grand Canyon population. The Long-Term Experimental and Management Plan prescribes the release patterns from the Glen Canyon Dam, helping to reduce and minimize impacts to Grand Canyon habitats. Starting in 2004, the temperature of water released through the Glen Canyon Dam increased in the summer and fall periods to 16 degrees Celsius (°C) (61 degrees Fahrenheit (°F)). Warmer temperatures generally allow individual humpback chub to grow larger and more quickly, but warmer water may also allow predatory warm-water, nonnative fish to invade and expand into humpback chub habitats. Nonnative fish in the lower basin, primarily cold-water brown trout (*Salmo trutta*) and rainbow trout (*Oncorhynchus mykiss*), mostly live in the colder water immediately below Glen Canyon Dam and tributaries of the Colorado River in the Grand Canyon, and not in humpback chub habitat. These two species do overlap with humpback chub in portions of the mainstem Colorado River. However, the majority of the areas inhabited by

humpback chub, including the Little Colorado River and western Grand Canyon, are dominated by native fish (van Haverbeke *et al.* 2018, p. 8; Pillow *et al.* 2018, p. 7).

In the lower basin, the Glen Canyon Dam AMP coordinates the protection of natural resources of the Colorado River flowing through the Grand Canyon, including the humpback chub, from Glen Canyon Dam to the Lake Mead inflow. Actions undertaken to support recovery of humpback chub include, but are not limited to, removal of nonnative trout; altering dam releases to study possible improvements of important food sources such as mayflies, stoneflies, and caddisflies; and the translocation of humpback chub to new tributary habitats.

The Grand Canyon population of humpback chub is the largest and most extensively distributed population of all the populations across the species' range, with broadly distributed groups of humpback chub in mainstem and tributary habitats between Glen Canyon Dam and Lake Mead. The core area includes the Little Colorado River and nearby portions of the mainstem Colorado River. This core group has likely remained relatively stable since 2008, with a high abundance of approximately 11,500 to 12,000 adults. Monitoring documented a substantial population decline in this area during the 1990s from unknown causes, but most likely due to limited recruitment, followed by a strong increase in the 2000s (Service 2018b, pp. 117–119). The subsequent increases in adult abundance were likely due to increased recruitment corresponding with warmer temperatures of released water and reduced nonnative, predatory trout numbers near the confluence with the Little Colorado River.

In addition to the core population in and near the Little Colorado River, the Grand Canyon population also has multiple aggregations of adult and sub-adult humpback chub distributed in the mainstem Colorado River. Recent monitoring efforts up to 2017 documented increases in relative abundance of these aggregations and associated catch rates since 2014 (Pillow *et al.* 2018, p. 8). In fact, preliminary abundance estimates were approximately 1,500 adult humpback chub in 2017, for a 6-km (4-mi) long reach in the vicinity of Fall Canyon and Pumpkin Spring in western Grand Canyon (Pillow *et al.* 2018, p. 8). Length frequencies for the humpback chub from these aggregation sites indicate that there are four distinct size groups, suggesting there is local, natural recruitment. Evidence of natural

recruitment indicates that the western Grand Canyon aggregations could be an extension of the core Grand Canyon population, or potentially a second, reproducing population in the Colorado River.

Since 2003, young humpback chub have been translocated from the Little Colorado River to tributaries in the Grand Canyon above natural barriers, such as chutes and waterfalls. Many of the translocated fish have either remained resident in new habitats or moved into the mainstem. Successful translocation efforts into Havasu Creek and upstream portions of the Little Colorado River have expanded the range of the species into new habitats. Translocated humpback chub have spawned in Havasu Creek, which increased the distribution of the humpback chub in the Grand Canyon population. Unfortunately, fish that were translocated into Shinumo Creek, a third site, were killed or displaced to the mainstem by a series of large, ash-laden floods after a wildfire burned in the drainage. These translocation efforts demonstrate that given suitable, available habitats, humpback chub can establish residency and reproduce in new locations.

Summary of the Lower Basin—The large population of humpback chub in the Grand Canyon, which includes a dense core population in the Little Colorado River, multiple downstream aggregations in the mainstem Colorado, and successful translocation efforts, indicates that resource conditions in the lower basin are of sufficient quality and quantity to support population resiliency. Individuals are reproducing in many of these broadly distributed areas, demonstrating that the species can complete its entire life history in multiple, diverse locations within the Grand Canyon.

The humpback chub has many traits that enable individuals to be resilient in the face of environmental or demographic stochasticity, including a long life span, high reproductive potential, use of habitats and water quality that are arduous to other species, adaptation to a wide variety of flow and thermal regimes, and a variable omnivorous diet. Population resiliency is demonstrated by the persistence of small populations (Cataract Canyon), population increases after previous declines (Grand Canyon), population establishment after translocations (Havasu Creek), and potential stabilization after previous declines (Black Rocks and Westwater Canyon). In addition, the large, current population size of the Grand Canyon population

buffers it from a variety of threats and environmental stochasticity.

The current distribution of the humpback chub in five extant populations across the upper and lower basins provides redundancy, although at a low level. Existing populations in the upper basin are mostly independently susceptible to catastrophe because they are located in different river basins and are many miles apart. Black Rocks and Westwater Canyon are the only two populations in close proximity. In the lower basin, where we define only one extant population, the population is widespread. New locations of humpback chub are being discovered (western Grand Canyon) or established (Havasu Creek) in the lower basin, providing resiliency to the large Little Colorado River core area.

Humpback chub populations also have adequate representation, as the multiple populations distributed across the range support the genetic diversity of the humpback chub. A preliminary technical report that is currently undergoing peer review recommends that genetic diversity of the species be managed as three units: Black Rocks & Westwater Canyon, Desolation and Gray Canyons and Cataract Canyons, and the Grand Canyon (Bohn *et al.* 2019, p. 8). These three units support the genetic diversity of the species and there is adequate exchange of individuals between populations in the upper basin.

We predicted the resiliency, redundancy, and representation of the humpback chub under three plausible future scenarios. The future scenarios we used to evaluate the future condition of the humpback chub are summarized below and are discussed in greater detail in the SSA report (Service 2018b, pp. 134–135).

Scenario 1 describes a reduction or elimination in current voluntary management actions for the species, but recognizes that conservation actions established under binding operational plans and agreements would continue; as such, Scenario 1 can be considered a future with reduced conservation actions. Scenarios 2 and 3 include the established management actions undertaken in Scenario 1, along with currently implemented voluntary management actions, and additional proactive and adaptive management actions that may be needed in the future; both Scenario 2 and 3 can be considered as futures with continued commitment to conservation actions. Scenario 2 and 3 differ in their confidence in the effectiveness of the conservation actions. Scenario 2 considers that implemented actions are not fully effective to mitigate impacts of

drought, future water development, nonnative fishes, or other threats, whereas Scenario 3 considers that implemented actions are sufficient to mitigate impacts of drought, future water development, nonnative fishes, and other threats. Scenarios 2 and 3 were developed to recognize the uncertainty concerning management actions' ability to mitigate stressors impacting humpback chub, especially future water availability and presence of nonnative fish.

We evaluated each of these scenarios in terms of how it would be expected to impact resiliency, redundancy, and representation of the species by the years 2034 and 2058 (16 and 40 years into the future). We selected the years 2034 and 2058 for our evaluation of future scenarios because they account for multiple generations of humpback chub.

Under Scenario 1, conditions would severely degrade within both 16 and 40 years, primarily in the Upper Basin. However, if collaborative partnerships remain in place and their conservation actions are effective as described under Scenario 3, resource conditions improve at 16- and 40-year timeframes. Under Scenario 2, degradation of resources takes place, even as conservation actions continue, resulting in neutral conditions within 16 years, but poor conditions within 40 years. Although there is large uncertainty of resource conditions under Scenario 2 at 40 years, extrapolation of the conditions demonstrates a continuing decline in resource conditions. The potential extirpation of multiple populations could most likely occur in the upper basin under the short 16-year timeframe in Scenario 1 and the longer 40-year timeframe under Scenario 2. Under Scenario 3, ongoing threat management proves successful in the long term, improving resource conditions. The health (resiliency) and distribution (redundancy) of all five extant populations reduces the risk from a potential catastrophic event under Scenario 3.

Based on the uncertain trajectory of several of the upper basin populations; the uncertainty associated with certain resource conditions, including nonnative fish, river flow, and food supply in the Grand Canyon; and the unresolved future of the Upper Basin Recovery Program, the future conditions for the populations and overall species viability is at increased risk and could decline within 40 years under Scenarios 1 and 2. Future conditions would only improve under Scenario 3 if long-term management actions are successful.

The SSA report (Service 2018b, entire) contains a more detailed discussion of our evaluation of the biological status of the humpback chub and the influences that may affect its continued existence. Our evaluations are based upon the best available scientific and commercial data.

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include "objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list." However, revisions to the Lists of Endangered and Threatened Wildlife and Plants (adding, removing, or reclassifying a species) must be based on determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made "solely on the basis of the best scientific and commercial data available." While recovery plans provide important guidance to the Service, States, and other partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species on, or to remove a species from, the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan. Below, we summarize recovery planning efforts for the humpback chub for informational purposes only.

We published the first recovery plan for the humpback chub in 1979, and published an updated plan in 1990. Many of the recovery actions in the first two recovery plans included assessing species needs, clarifying taxonomic

status, defining humpback chub populations, and establishing monitoring programs in order to more fully understand the status and needs of the species (Service 1979; Service 1990). In 2002, the humpback chub recovery goals supplemented and amended the 1990 recovery plan, and provided objective and measurable demographic criteria and recommendations for site-specific management actions needed for recovery (Service 2002). The six populations described in this proposed rule and the SSA report, including the now extirpated Dinosaur National Monument, were considered extant in the 2002 recovery goals. Today, five populations are extant and the Dinosaur National Monument population is considered extirpated. Furthermore, when the recovery goals were approved, a minimum viable population (MVP) was estimated to be at least 2,100 adults. When the 2002 recovery goals were published, robust mark/recapture population monitoring efforts had just begun in the upper basin. The recovery goals include the following demographic reclassification criteria (summarized for brevity):

Downlisting could occur if, over a 5-year period, all of the following criteria are met:

Criterion 1: Adult abundances for each of the six populations does not decline significantly.

Criterion 2: Natural mean recruitment equals or exceeds mean adult mortality in each of the six populations.

Criterion 3: Two core populations exist that exceed 2,100 adults.

Criterion 4: Site-specific management actions are identified, developed, and implemented.

For downlisting criterion 4, the recovery goals described the following management actions needed to support the species (summarized for brevity):

(1) Provide, and legally protect, habitat and flow regimes.

(2) Investigate the mainstem Colorado River's role in the Grand Canyon population.

(3) Investigate warmer water temperatures in the mainstem Colorado River through the Grand Canyon.

(4) Ensure adequate protection from overutilization.

(5) Ensure adequate protection from diseases and parasites.

(6) Regulate nonnative fish releases and escapement.

(7) Control problematic nonnative fishes as needed.

(8) Minimize the risk of increased hybridization among *Gila* spp.

(9) Minimize the risk of hazardous-materials spills in critical habitat.

(10) Provide for the long-term management and protection of

populations and their habitats if the species were delisted.

(11) The recovery goals further describe that delisting could occur if, 3 years after the downlisting criteria are met, downlisting criteria 1, 2, and 4 continue to be met (described above), and a third core population is added under downlisting criterion 3.

The current status of the humpback chub partially meets the 2002 recovery criteria. Although five of the extant populations of humpback chub have not declined significantly over the past decade, criterion 1 has not been fully met because the adult population of Dinosaur National Monument declined and the population is now considered extirpated. Criterion 2 has been partially met in the five extant populations, as those populations are largely stable over the past decade, but not in the extirpated Dinosaur National Monument population. Criterion 3 is met for downlisting, because the Little Colorado River core area in the Grand Canyon population contain approximately 11,500 adults (Service 2018b, p. 77) and the most recent preliminary estimate for Westwater Canyon is a mean of approximately 2,800 adults in 2016 and 2017 (Hines 2018, p. 12). Criterion 3 is not met for delisting because the next largest population, Desolation and Gray Canyons, was last estimated as approximately 1,700 adults in 2015 (Howard and Caldwell 2018, p. 18).

Regarding the first and second recovery criteria, we now expect that a 5-year period may not be adequate to consider the demographic variability of humpback chub populations resulting from substantial environmental variability in the Colorado River ecosystem. Humpback chub evolved in and are adapted to a highly variable ecosystem with fluctuating levels of drought and flood. Consequently, the life history of the species is one in which reproductive success and mortality rates can fluctuate greatly from year to year. Certainly, over long-term time frames, the species needs a stable adult population and adequate recruitment, but these conditions are not likely to occur every year. Consequently, recovery criteria specifying little to no change in demographics for a five year period may not be appropriate for the species.

Regarding downlisting criterion 3, the MVP was established without considering each individual population's characteristics, such as river-miles and resource conditions. For example, the core Little Colorado River area in the Grand Canyon population currently supports as many as 5 times the MVP, with additional humpback

chub residing in other areas. Other habitats, such as Cataract Canyon, likely could not support the MVP. This demonstrates that considering each population's resources and conditions is a more useful tool than considering one single MVP.

Finally, regarding downlisting criterion 4, a number of the management actions have been achieved, such as items (2), (3), and (6); a number of the actions are ongoing and still needed, such as items (1), (7), and (10); and a number of the actions are no longer considered needed for the species, such as items (4), (5), (8), and (9). Based on the updated scientific knowledge of humpback chub, the 2002 recovery goals should be reviewed and updated. As such, the 2018, 5-year review of the status of the species recommended revising the 2002 recovery goals to incorporate new information about the species. We expect to revise the recovery plan for humpback chub when this rulemaking process is complete.

Determination of Humpback Chub Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of "endangered species" or "threatened species." The Act defines an "endangered species" as a species that is "in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Act requires that we determine whether a species meets the definition of "endangered species" or "threatened species" because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we identified changes to water flow and temperature (Factor A), food availability (Factor A), and predatory, nonnative fish (Factor C) as potential stressors to the humpback chub (Service 2018b, pp. 126–133). There is no evidence that overutilization (Factor B)

of humpback chub, disease (Factor C), or other natural and manmade factors affecting the species (Factor E) are occurring. Existing regulatory mechanisms (Factor D) are discussed below. We evaluated each potential stressor, including its source, affected resources, exposure, immediacy, geographic scope, magnitude, and impacts on individuals and populations, and our level of certainty regarding this information, to determine which stressors were likely to be drivers of the species' current and future conditions (Service 2018b, pp. 126–133). We also evaluated the effects of stressors that may operate cumulatively, such as low river flows and warm water temperatures that may act cumulatively to increase predation by nonnative predators.

We note that by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Our analysis found that the primary drivers for the humpback chub's current and future condition are diminishing river flow, increasing water temperature, expanding populations of nonnative fish, and food availability in the Grand Canyon. Low river flows and warm water temperatures may also act cumulatively to increase predation by nonnative predators. We summarize these stressors below, with more detail provided in the SSA report (Service 2018b, pp. 126–133).

River flow and temperature—The presence and operation of large dams alter suitable river flow and temperatures. Historical dam operations did not always provide river flow conditions that supported humpback chub, but recent modifications to operations have reduced some impacts from the presence of dams. We

evaluated how the effects of global climate change could impact river flows and water temperatures using hydroclimate projections of future water resources in the Colorado River basin. Hydroclimate projections predict that decreased warm-season runoff will reduce river flows, primarily from increased frequency and severity of drought, which further result in warmer water temperatures (U.S. Bureau of Reclamation 2016, i–ii). Warmer, lower flows in the upper basin increase the risk of nonnative fish species impacting humpback chub populations. Warmer releases from Lake Powell could also impact abundance and distribution of nonnative fish in the Grand Canyon. However, current river flow conditions and temperatures are largely adequate for humpback chub in both basins because reservoir operations have had the flexibility and commitment to support humpback chub when making dam releases. Future conditions of river flow and temperature are uncertain because conditions are shaped by regional climatic patterns and water availability, and regulated by the operation of large dams.

Food availability—Humpback chub require an adequate and reliable food supply, which can consist of a variety of insects, crustaceans, and plants. Food is supplied by the instream production of invertebrates, insect emergences, and floods laden with debris. In the upper basin, food supply has not been measured, but is not believed to be a limiting factor. Conversely, below Glen Canyon Dam in the lower basin, the condition of the humpback chub populations has decreased due to low aquatic insect diversity and declining stream productivity. It is unclear if management could improve food availability below the Glen Canyon Dam, but altered release patterns from the dam could potentially increase instream production of food resources for humpback chub.

Predation—Predation and competition by nonnative fish are stressors to humpback chub in both the upper and lower basins. Because of the species' slow growth and late sexual maturity, juvenile humpback chub are vulnerable to predation from predatory, nonnative fish during the first few years of life. Nonnative fish can also compete for resources with adult humpback chub, reducing the species breeding, feeding, and sheltering. The humpback chub evolved in an environment relatively free of predators and competitors. Therefore, it is ill-adapted to living with the many nonnative fish that have been introduced into the Colorado River basin because it is a soft-

rayed fish with no defense mechanisms for protection from predators. Although the species has no natural defense mechanisms, the habitats occupied by humpback chub may limit impacts from nonnative species because of the more arduous hydrological conditions of canyons. Predation from nonnative fish may also increase when warm water temperatures act cumulatively with low flows.

Predation from nonnative fish, particularly smallmouth bass in the upper basin, is a potential threat to the viability of humpback chub. Currently, through active flow management and nonnative predator removal, nonnative predators are not limiting four of the five extant humpback chub populations, but are moderately impacting two (one extant and one extirpated) populations. Although current resource conditions are acceptable in the upper basin, the risk for substantial and rapid degradation is present.

In the lower basin, current densities of nonnative predators are low, and management actions are in place to prevent establishment of new species. However, recent increases in brown trout density in the Lees Ferry reach of the Colorado River and the discovery of green sunfish (*Lepomis cyanellus*) immediately below Glen Canyon Dam demonstrate that risks do exist in the lower basin, primarily related to operations of Glen Canyon Dam and escapement from Lake Powell. Lower elevations of Lake Powell enhance risk of nonnative predator establishment in the Grand Canyon via increased risk of fish escaping through Glen Canyon Dam and warmer water releases that support nonnative predators.

All upper basin humpback chub populations have dense nonnative predator populations nearby, but only one of the four extant populations and the site of the extirpated population currently undergo periodic increases in densities of nonnative predators within humpback chub habitats. Those two populations, Dinosaur National Monument (extirpated) and Desolation and Gray Canyons (extant), experience periodic fluctuations in smallmouth bass density, demonstrating the latent risk. If environmental conditions change, such as reduced river flow or increased water temperature from long-term drought, nearby populations of nonnative predators could rapidly colonize upper basin humpback chub habitats. Similarly, if management of nonnative predators is reduced or eliminated, nonnative predators could rapidly colonize humpback chub habitats. Smallmouth bass colonization of multiple humpback chub populations

would significantly decrease the viability of the species, especially in the upper basin. Therefore, although current resource conditions related to nonnative predatory fish are acceptable, there is risk associated with predators in the future.

Regulatory mechanisms—Regulatory mechanisms (Factor D) and other management efforts benefit the humpback chub. Most resources affecting humpback chub are strictly regulated through Federal, State, and tribal mechanisms. The humpback chub's canyon habitats are largely protected by Federal, State, and tribal land ownership, and humans primarily use humpback chub habitats for recreation. Releases from large dams, primarily operated by the U.S. Bureau of Reclamation, are now operated to promote river function and fish habitat under binding operational and management plans described in the Records of Decision for the Aspinnall Unit (U.S. Bureau of Reclamation 2012, pp. 1), Flaming Gorge Dam (US Bureau of Reclamation 2006, pp. 1–2), and Glen Canyon Dam (U.S. Department of the Interior 2016, pp. 1–2). Water use and delivery in the Colorado River basin is strictly regulated under existing Federal, State, and tribal laws commonly referred to as the “Law of the River”, including, but not limited to, the Colorado River Compact of 1922, the Upper Colorado River Basin Compact of 1948, the Colorado River Storage Project Act of 1956, the Colorado River Basin Project Act of 1968, and individual state and tribal statutes that regulate water appropriation.

The Upper Basin Recovery Program coordinates and implements the majority of management actions for the four extant and one extirpated upper basin populations, while the Glen Canyon Dam AMP undertakes management actions for the mainstem Colorado River in the lower basin. These programs are considered regulatory mechanisms because they are authorized through or comply with Federal legislation. The Upper Basin Recovery Program was authorized under Public Law 106–392 and has been renewed on a periodic basis by acts of Congress. The Glen Canyon Dam AMP was established under the Record of Decision to operate Glen Canyon Dam needed to comply with the Grand Canyon Protection Act of 1992 (U.S. Bureau of Reclamation 1996, pp. G–3 to G–4).

Commitment to management actions for the benefit of humpback chub is strong among the various partnerships; nevertheless, uncertainty of continued implementation does exist. For

example, the cooperative agreement establishing the Upper Basin Recovery Program expires in 2023. Elimination of the Upper Basin Recovery Program would introduce severe uncertainty about continued implementation of important management actions for humpback chub in the upper basin. In the lower basin, the Long-Term Experimental and Management Plan and other legally binding mechanisms provide more certainty for humpback chub conservation actions, but additional adaptive actions are still likely needed to respond to changing resource conditions (Service 2018b, pp. 12–14).

The Upper Basin Recovery Program and Glen Canyon Dam AMP are key regulatory mechanisms that shape the current and future condition of humpback chub. Both programs implement management actions that benefit all resource needs of the humpback chub. For example, both programs provide adequate habitat conditions by managing river flow and water temperature and by managing nonnative fish species. Although it is likely that both programs will continue to implement management actions, there is uncertainty regarding the status of the Upper Basin Recovery Program over the next 16 to 40 years.

Currently, resource conditions are adequate and support a large, stable population in the lower basin and multiple persistent populations in the upper basin. Although the current risk of extinction is low, there is enough risk associated with the potential loss of important management actions such that the species is vulnerable and likely to become endangered throughout all of its range within the foreseeable future.

We find that endangered species status is not appropriate for the humpback chub because the species currently demonstrates sufficient individual and population resiliency, redundancy, and representation across both the upper basin and lower basin populations, such that the potential extirpation of multiple populations is not likely to occur now or in the short term. The current resiliency of the large core population in the lower basin and the current resiliency and redundancy of the four populations in the upper basin decrease the risk to the species from stochastic and catastrophic events, such that the species currently has a low risk of extinction. Therefore, the risk of extinction is currently low, and therefore the species is not in danger of extinction.

Thus, after assessing the best available information, we conclude that the humpback chub is not currently in

danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Because we have determined that the humpback chub is likely to become an endangered species within the foreseeable future throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing "throughout all" of its range and proceed to conduct a "significant portion of its range" analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the "throughout all" language. We note that the court in *Desert Survivors v. Department of the Interior*, No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Determination of Status

Our review of the best available scientific and commercial information indicates that the humpback chub meets the definition of a threatened species. Therefore, we propose to reclassify the humpback chub as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Proposed 4(d) Rule

Background

Section 4(d) of the Act states that the "Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation" of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened

species to the point at which the measures provided pursuant to [the Act] are no longer necessary." Additionally, section 4(d) of the Act states that the Secretary "may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants." Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also approved 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species or he may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The Service has developed a species-specific 4(d) rule that is designed to address the humpback chub's specific threats and conservation needs. Although the statute does not require the Service to make a "necessary and advisable" finding with respect to the adoption of specific prohibitions under section 9, we find that this regulation is necessary and advisable to provide for the conservation of the humpback chub. As discussed in the Summary of Biological Status and Threats section, the Service has concluded that the humpback chub is at risk of extinction within the foreseeable future primarily due to changes to water flow and temperature, food availability, and predatory, non-native fish. The provisions of this proposed 4(d) rule

would promote the conservation of the humpback chub by providing continued protection from take and to facilitate the expansion of the species' range by increasing flexibility in management activities. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the humpback chub. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the humpback chub as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the humpback chub by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This proposed 4(d) rule includes actions to facilitate conservation and management of humpback chub where they currently occur, and may occur in the future, by eliminating the Act's take prohibition for certain activities. These activities are intended to encourage support for the conservation of humpback chub. Under this proposed 4(d) rule, take will continue to be prohibited, except for the following forms of take that would be excepted under the Act:

- Take resulting from creating and maintaining humpback chub refuge populations;
- Take resulting from expanding the range of the species, including translocating wild fish and stocking hatchery-reared fish;
- Incidental take from reducing or eliminating nonnative fish from habitats adjacent to, or occupied by, humpback chub;
- Take resulting from catch-and-release angling activities associated with humpback chub, including incidental take from non-humpback chub-targeted angling in the six core populations and take from humpback chub-targeted angling in any newly established areas; and
- Take associated with chemical treatments in support of the recovery of humpback chub.

Under this proposed 4(d) rule, take resulting from these activities would not be prohibited as long as reasonable care is practiced to minimize the effects of such taking. Reasonable care includes limiting the impacts to humpback chub individuals and populations by complying with all applicable Federal, State, and tribal regulations for the

activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; ensuring the number of individuals removed or sampled minimally impacts existing extant wild population; ensuring no disease or parasites are introduced into existing extant wild humpback chub populations; and preserving the genetic diversity of extant wild populations.

Creation and Maintenance of Refuge Populations

Establishing and maintaining humpback chub refuge populations is an important consideration for long-term humpback chub viability because refuge populations safeguard genetic diversity against catastrophic declines in wild populations and can be necessary to protect a population from extirpation. In the case of declining wild populations, refuge populations provide the flexibility to perform supplemental stocking into existing populations or reintroduction of individuals to extirpated areas. Refuge populations may also allow for stocking of individuals into new areas that expand the range of the species (see *Translocation or Stocking of Humpback Chub*, below). The process of establishing and supplementing refuge populations requires take in the form of collection of wild individuals of various life stages. Furthermore, the long-term care and maintenance of refuge populations will result in take, including death of individuals held in captivity. However, preservation of genetic diversity in refuge populations outweighs any losses to wild populations if performed in a deliberate, well-designed process.

Currently, some, but not all, of the genetic diversity of humpback chub exists in captive refuge populations. Approximately 1,000 individuals from the Grand Canyon population are managed as a refuge population at the Southwestern Native Aquatic Resources and Recovery Center (SNARRC) in Dexter, New Mexico; additionally, a small number of adults from the Black Rocks population reside at the Horsethief ponds near Grand Junction, Colorado. In order to preserve the full breadth of genetic diversity of humpback chub, creation of additional refuge populations could be suggested in the revised humpback chub recovery plan, by the Service, or in other proceedings, such as section 7 consultations between the Service and Federal agencies. We expect to revise the recovery plan for humpback chub when this rulemaking process is complete.

This proposed 4(d) rule describes creation and maintenance of humpback chub refuge populations excepted from take as activities undertaken for the long-term protection of humpback chub genetic diversity. Refuge populations must include specific genetic groupings of humpback chub as defined by the best available science and must be managed to maintain the genetic diversity of the species. Refuge populations can occur at both captive and wild locations.

The Service must approve in writing the designation of a refuge population, and any removal of individuals from wild populations. Subsequent to those approvals, under this proposed 4(d) rule, the Service would no longer regulate the take associated with maintenance of that population. Take associated with refuge populations could include harvest of wild individuals from extant populations; incidental take during the long-term care of individuals in captivity; take related to disease, parasite, genetic assessment, and management of captive populations; and natural mortality of individuals existing in refuge populations.

Translocation and Stocking of Humpback Chub

Translocating wild humpback chub and stocking hatchery-reared humpback are important management actions supporting the long-term viability of the species. Introducing individuals into new areas can provide increased redundancy and decreased risk to catastrophic events by expanding the range of the species. Introducing individuals into wild populations can provide increased resiliency for extant populations by potentially offsetting population declines or increasing genetic diversity. The process of translocating wild individuals can result in take to wild individuals, including possible mortality to fish that are moved. The process of culturing and stocking individuals can also result in take via hatchery methods or incidental mortality of stocked individuals. However, if the translocation or stocking program is performed under a deliberate, well-designed program, the benefits to the species can greatly outweigh the losses.

Translocations of wild humpback to new locations have demonstrated success in the Grand Canyon. Between 2003 and 2015, juvenile humpback chub were translocated from the Little Colorado River to Shinumo Creek, Havasu Creek, and the Little Colorado River above Chute Falls. At all three locations, translocated fish established

residency, increasing the range of the species (although the Shinumo Creek population was later extirpated via ash-laden floods following a wildfire). The Havasu Creek population also demonstrated wild reproduction and recruitment, further supporting the management action of translocations for expanding the range of the humpback chub. Based on these successes, translocation appears to be a possible tool to reintroduce individuals into the Dinosaur National Monument population or to expand the range of humpback chub into other areas.

Currently, humpback chub are not cultured in hatcheries, nor are any broodstock fish maintained at a hatchery. However, in the future, hatchery production and culture may be a necessary tool either to supplement existing populations or to introduce individuals to new locations without harvesting wild fish.

This proposed 4(d) rule describes translocation and stocking of humpback chub excepted from take as any activity undertaken to expand the range of humpback chub or to supplement existing wild populations. Take from translocation could include harvest and movement of wild individuals from extant populations to new areas and subsequent mortality of fish in new locations. Any translocation program must be approved in writing by the Service. Take from stocking programs could include take during the long-term care of individuals in captivity; take related to disease, parasite, genetic assessment, and management of captive populations while they are in captivity; and take from stocking, including subsequent mortality of stocked individuals. Any harvest of wild fish to support a stocking program must comply with the conditions described above under *Creation and Maintenance of Refuge Populations*. Any stocking of humpback must follow best hatchery and fishery management practices as described in the American Fisheries Society's *Fish Hatchery Management* (Wedemeyer 2002, entire) and be approved by the Service. Any stocking of individuals outside the six core populations must comply with State stocking regulations.

Nonnative Fish Removal

Control of nonnative fishes is vital for the continued recovery of humpback chub because predatory, nonnative fishes are a principal threat to humpback chub (see Summary of Biological Status and Threats, above). Removal of nonnative fishes reduces predation and competition pressure on humpback chub, increasing humpback

chub survival, recruitment, and access to resources. During the course of removing nonnative fishes, take of humpback chub may occur from incidental captures resulting in capture, handling, injury, or possible mortality. However, nonnative removal activities in humpback chub habitats are designed to be selective, allowing for the removal of predatory, nonnative fish while humpback chub are returned safely to the river. Therefore, if nonnative fish removal is performed under deliberate, well-designed programs, the benefits to humpback chub can greatly outweigh losses.

Currently, active nonnative fish removal is widespread in the upper basin, but is less common in the lower basin. Control of nonnative fishes is conducted by qualified personnel in the upper basin via mechanical removal using boat-mounted electrofishing, nets, and seines, primarily focusing on removal of smallmouth bass, northern pike (*Esox lucius*), and walleye (*Sander vitreus*). Removal of nonnative fishes in the upper basin is performed under strict standardized protocols to limit impacts to humpback chub. In the lower basin, nonnative fish actions primarily focus on preventing establishment of new species (such as removal of green sunfish below Glen Canyon Dam) and controlling populations of trout in tributary habitats (such as removal of brown trout in Bright Angel Creek). New techniques, as available and feasible, may also need to be implemented in the future.

This proposed 4(d) rule describes nonnative fish removal excepted from take prohibitions as any action with the primary or secondary purpose of mechanically removing nonnative fishes that compete with, predate, or degrade the habitat of humpback chub, and that is approved in writing by the Service for that purpose. These methods include mechanical removal within occupied humpback chub habitats, including, but not limited to, electrofishing, seining, netting, and angling, or other ecosystem modifications such as altered flow regimes or habitat modifications. All methods must be conducted by qualified personnel and used in compliance with applicable Federal, State, and tribal regulations. Whenever possible, humpback chub that are caught alive as part of nonnative fish removal should be returned to their capture location as quickly as possible.

Catch-and-Release Angling of Humpback Chub

Recreational angling is an important consideration for management of all fisheries, as recreational angling is the

primary mechanism by which the public interacts with fishes. Furthermore, angling regulations are an important communication tool. While the humpback chub is not currently a species that is prized for its recreational or commercial value, the species is a large-bodied, catchable-sized fish that could offer potential recreational value in certain situations. Conservation value from public support for humpback chub could arise through newly established fishing locations and public engagement with this species. Furthermore, anglers do target species that co-occur with humpback chub at some locations. As a result, otherwise legal angling activity in humpback chub habitats could result in the unintentional catch of humpback chub by the angling public. Catch-and-release angling, both intentional and incidental, can result in take of humpback chub through handling, injury, and potential mortality. However, the conservation support that angling provides can outweigh losses to humpback chub, if the angling program is designed appropriately.

Currently, State angling regulations require the release of all incidental catches of humpback chub and do not allow anglers to target the species. Therefore, current angling regulations for humpback chub by the States of Arizona, Colorado, and Utah demonstrate a willingness to enact appropriate regulations for the protection of the humpback chub. It is important to continue to protect humpback chub from intentional angling pressure in the six core populations (five extant and one extirpated) because of their importance to the recovery of the species. These populations, as described in Tables 1 and 7 of the SSA report, are Desolation and Gray Canyons (Green River, Utah), Dinosaur National Monument (Green and Yampa rivers, Colorado and Utah), Black Rocks (Colorado River, Colorado), Westwater Canyon (Colorado River, Utah), Cataract Canyon (Colorado River, Utah), and Grand Canyon (Colorado and Little Colorado rivers, Arizona). Supporting recreational fishing access to these areas for species other than humpback chub is an important economic consideration for State and tribal entities. We propose to allow incidental take of humpback chub from angling activities that are in accordance with State and tribal fishing regulations in the six core humpback chub populations, but that do not target humpback chub. That is, incidental take associated with incidental catch-and-release of humpback chub in the core populations would not be prohibited.

Reasonable consideration by the States and tribes for incidental catch of humpback chub in the six core populations include: (1) Regulating tactics to minimize potential injury and death to humpback chub if caught; (2) communicating the potential for catching humpback chub in these areas; and (3) promoting the importance of the six core populations.

Outside of the six core populations, we foresee that Federal, State, or tribal governments may want to establish a new recovery location where humpback chub could be targeted for catch-and-release angling or a new location without recovery value, where the sole purpose is recreational angling for humpback chub. Newly established locations could offer a genetic refuge for core populations of humpback chub (see *Creation and Maintenance of Refuge Populations*, above), provide a location for hatchery-reared fish (see *Translocation and Stocking of Humpback Chub*, above), and offer the public a chance to interact with the species in the wild. Therefore, we propose to allow take of humpback chub from catch-and-release angling activities that target humpback chub and are in accordance with State and tribal fishing regulations in areas outside of the six core humpback chub populations.

Sport fishing for humpback chub would only be allowed through the 4(d) rule and subsequent State or tribal regulations created in collaboration with the Service. This rule would allow recreational catch-and-release fishing of humpback chub in specified waters, not including the six core populations. Management as a recreational species would be conducted after completion of, and consistent with the goals within, a revised recovery plan for the species. The principal effect of this 4(d) rule would be to allow take in accordance with fishing regulations enacted by States or tribes, in collaboration with the Service.

Recreational opportunities may be developed by the States and tribes in new waters following careful consideration of the locations and impacts to the species. Reasonable consideration for establishing new recreational locations for humpback chub include, but are not limited to: (1) Carefully evaluating each water body and determining whether the water body can sustain angling; (2) ensuring the population does not detrimentally impact core populations of humpback chub through such factors as disease or genetic drift; (3) ensuring adequate availability of humpback chub to support angling; and (4) monitoring to ensure there are no detrimental effects

to the population from angling. If monitoring indicates that angling has a negative effect on the conservation of humpback chub in the opinion of the Service, the fishing regulations must be amended or the fishery could be closed by the appropriate State.

Chemical Treatments Supporting Humpback Chub

Chemical treatments of water bodies are an important fisheries management tool because they are the principal method used to remove all fishes from a defined area. That is, chemical treatments provide more certainty of complete removal than other methods, such as mechanical removal. Therefore, chemical treatments are used for a variety of restoration and conservation purposes, such as preparing areas for stocking efforts, preventing nonnative fishes from colonizing downstream areas, and resetting locations after failed management efforts. Chemical treatments of water bodies could take humpback chub if individuals reside in the locations that are treated and cannot be salvaged completely prior to treatment. However, the overall benefit of conservation actions implemented using chemical treatment can outweigh the losses of humpback chub, if careful planning is taken prior to treatments.

Chemical piscicides (chemicals that are poisonous to fish) have been used in the upper and lower basin to remove upstream sources of nonnative fishes in support of humpback chub. For example, Red Fleet Reservoir (Green River, Utah) was treated by Utah Division of Wildlife Resources to remove walleye that were escaping downstream, and a slough downstream of Glen Canyon Dam (Colorado River, Arizona) was treated by the National Park Service to remove green sunfish before they could invade humpback chub habitat. At Red Fleet Reservoir, chemical treatment also provided the Utah Division of Wildlife Resources with the ability to establish a new fish community that supported angling interests and provided greater compatibility with downstream conservation efforts.

Chemical treatments could support a variety of activities to assist in the conservation of humpback chub, including certain other actions described in this proposed 4(d) rule. For example, chemical treatments could be used prior to introducing humpback chub to a wild refuge population, a translocation site, or a sport fishing location. Nonnative fishes can also be removed using chemical treatments, providing a faster and more complete removal than mechanical removal.

Furthermore, chemical treatments offer the ability to fully restore a location after a failed introduction effort. For example, if humpback chub were stocked into a new area, but did not successfully establish, landowners may want to restore this location for another purpose.

Chemical treatments would be allowed under this proposed 4(d) rule. Necessary precautions and planning should be applied to avoid impacts to humpback chub. For example, treatments upstream of occupied humpback chub habitats should adhere to all protocols to limit the potential for fish toxicants and piscicides travelling beyond treatment boundaries. Chemical treatments that take place in locations where humpback chub occur, or may occur, must take place only after a robust salvage effort takes place to remove humpback chub in the area. Whenever possible, humpback chub that are salvaged should be moved to a location that supports recovery of the species. Any chemical treatment that takes place in an area where humpback chub may reside would need written approval from the Service, but treatments of unoccupied habitat would not need to be approved. Once the location of a chemical treatment is approved in writing by the Service, the take of humpback chub by qualified personnel associated with performing a chemical treatment would not be regulated by the Service.

Reporting and Disposal of Humpback Chub

Under the proposed 4(d) rule, if humpback chub are killed during actions described in the 4(d) rule, the Service must be notified of the death and may request to take possession of the animal. Notification should be given to the appropriate Regional Law Enforcement Office Service or associated management office. Information on the offices to contact is set forth under Proposed Regulation Promulgation, below. Law enforcement offices must be notified within 72 hours of the death, unless special conditions warrant an extension. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure or if the activity was conducted in area without sufficient communication access.

Permits

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50

CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

This proposed 4(d) rule would not impact existing or future permits issued by the Service for take of humpback chub. Any person with a valid permit issued by the Service under § 17.22 or § 17.32 may take humpback chub, subject to all take limitations and other special terms and conditions of the permit.

The Service recognizes the special and unique relationship with our state natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve humpback chub that may result in otherwise prohibited take for wildlife without additional authorization.

Proposed 4(d) Rule

We believe the actions and activities that would be allowed under this proposed 4(d) rule, while they may cause some level of harm to individual humpback chub, would not negatively affect efforts to conserve and recover humpback chub, and would facilitate these efforts by increasing educational opportunities and public support for the conservation of humpback chub and by providing more efficient implementation of recovery actions. This proposed 4(d) rule would not be made final until we have reviewed and fully considered comments from the public.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the humpback chub. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

Required Determinations

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). We also determine that 4(d) rules that accompany regulations adopted pursuant to section 4(a) of the Act are not subject to the National Environmental Policy Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, Secretarial Order 3206, the Department of the Interior's manual at 512 DM 2, and the Native American Policy of the Service (January 20, 2016), we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We will coordinate with tribes in the range of the humpback chub and request their input on this proposed rule.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2018-0081, and upon request from the Upper Colorado River Endangered Fish Recovery Program Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Service's Upper Colorado River Endangered Fish Recovery Program Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11(h) by revising the entry for "Chub, humpback" under FISHES on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|----------------|-------------------------|----------------|---------|---|
| * | * | * | * | * |
| FISHES | | | | |
| * | * | * | * | * |
| Chub, humpback | <i>Gila cypha</i> | Wherever found | T | 32 FR 4001, 3/11/1967; [Federal Register citation when published as a final rule]; 50 CFR 17.44(cc); ^{4d} 50 CFR 17.95(e). ^{CH} |
| * | * | * | * | * |

■ 3. Amend § 17.44 by adding a paragraph (cc) to read as follows:

§ 17.44 Special rules—fishes.

(cc) Humpback chub (*Gila cypha*).

(1) *Prohibitions.* Except as provided under paragraph (cc)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

- (i) Import or export, as set forth at § 17.21(b).
- (ii) Take, unless excepted as outlined in paragraphs (cc)(2)(i) through (iv) of this section.
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).
- (iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).
- (v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

- (i) Conduct activities as authorized by an existing permit under § 17.32.
- (ii) Conduct activities as authorized by a permit issued prior to [effective date of the rule] under § 17.22 for the duration of the permit.
- (iii) Take, as set forth at § 17.21(c)(2) through (c)(4).
- (iv) Take humpback chub while carrying out the following legally conducted activities in accordance with this paragraph:

(A) *Definitions.* For the purposes of this paragraph:

- (1) *Person* means a person as defined by section 3(13) of the Act.
- (2) *Qualified person* means a full-time fish biologist or aquatic resources manager employed by any of the Colorado River Basin state wildlife agencies, the Department of Interior bureaus offices located within the Colorado River basin, or fish biologist or aquatic resource manager employed by a private consulting firm, provided the firm has received a scientific collecting permit from the appropriate state agency.

(3) *The six core populations* means the following populations of the humpback chub: Desolation and Gray Canyons (Green River, Utah), Dinosaur National Monument (Green and Yampa rivers, Colorado and Utah; currently extirpated), Black Rocks (Colorado River, Colorado), Westwater Canyon (Colorado River, Utah), Cataract Canyon (Colorado River, Utah), and Grand Canyon (Colorado and Little Colorado rivers, Arizona).

(4) *Reasonable care* means limiting the impacts to humpback chub individuals and populations by complying with all applicable Federal, State, and tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; ensuring the number of individuals removed or sampled minimally impacts existing extant wild population; ensuring no disease or parasites are introduced into existing extant wild humpback chub populations; and preserving the genetic diversity of extant wild populations.

(B) *Creation and maintenance of refuge populations.* A qualified person may take humpback chub in order to create or maintain a captive or wild refuge population that protects the long-term genetic diversity of humpback chub, provided that reasonable care is practiced to minimize the effects of that taking.

(1) Methods of allowable take under this paragraph (cc)(2)(iv)(B) include, but are not limited to:

- (i) Removing wild individuals via electrofishing, nets, and seines from the six core populations;
- (ii) Managing captive populations, including handling, rearing, and spawning of captive fish;
- (iii) Sacrificing individuals for hatchery management, such as parasite and disease certification; and
- (iv) Eliminating wild refuge populations if conditions are deemed inadequate for conservation of the species or are deemed detrimental to the six core populations.

(2) Before the establishment of any captive or wild refuge population, the Service must approve, in writing, the designation of the refuge population, and any removal of humpback chub individuals from wild populations. Subsequent to a written approval for the establishment of a refuge population, take associated with the maintenance of the refuge population would not be prohibited under the Act.

(C) *Translocation and stocking of humpback chub.* A qualified person may take humpback chub in order to introduce individuals into areas outside of the six core populations. Humpback chub individuals may be introduced to new areas by translocating wild individuals to additional locations or by stocking individuals from captivity. All translocations of wild individuals and stocking of individuals from captivity must involve reasonable care to minimize the effects of that taking. Translocations of wild individuals and stocking of individuals from captivity must be undertaken to expand the range of humpback chub or to supplement existing populations.

(1) Methods of allowable take under this paragraph (cc)(2)(iv)(C) include, but are not limited to:

- (i) Removing wild individuals via electrofishing, nets, and seines;
- (ii) Managing captive populations, including handling, rearing, and spawning;
- (iii) Sacrificing individuals for hatchery management, such as parasite and disease certification; and
- (iv) Removing or eliminating all humpback chub from failed introduction areas via mechanical or chemical methods.

(2) The Service must approve, in advance and in writing:

- (i) Any translocation program; and
- (ii) Any stocking of humpback chub into any of the six core populations.

(D) *Nonnative fish removal.* A qualified person may take humpback chub in order to perform nonnative fish removal for conservation purposes if reasonable care is practiced to minimize effects to humpback chub. For this paragraph (cc)(2)(iv)(D), nonnative fish

removal for conservation purposes means any action with the primary or secondary purpose of mechanically removing nonnative fishes that compete with, predate, or degrade the habitat of humpback chub.

(1) Methods of allowable take under this paragraph (cc)(2)(iv)(D) include, but are not limited to:

(i) Mechanical removal of nonnative fish within occupied humpback chub habitats, including, but not limited to, electrofishing, seining, netting, and angling; and

(ii) The use of other ecosystem modifications, such as altered flow regimes or habitat modifications.

(2) The Service and all applicable landowners must approve, in advance and in writing, any nonnative fish removal activities under this paragraph.

(E) *Catch-and-release angling of humpback chub.* States and tribes may enact Federal, State, and tribal fishing regulations that address catch-and-release angling.

(1) In the six core populations, angling activities may include non-targeted (incidental) catch and release of humpback chub when targeting other species in accordance with Federal, State, and tribal fishing regulations.

(2) In areas outside of the six core populations, angling activities may include targeted catch and release of humpback chub in accordance with Federal, State, and tribal fishing regulations.

(3) Angling activities may cause take via:

(i) Handling of humpback chub caught via angling;

(ii) Injury to humpback chub caught via angling; and

(iii) Unintentional death to humpback chub caught via angling.

(4) Reasonable consideration by the Federal, State, and tribal agencies for incidental catch and release of humpback chub in the six core populations include:

(i) Regulating tactics to minimize potential injury and death to humpback chub if caught;

(ii) Communicating the potential for catching humpback chub in these areas; and

(iii) Promoting the importance of the six core populations.

(5) Reasonable consideration for establishing new recreational angling locations for humpback chub include, but are not limited to:

(i) Evaluating each water body's ability to support humpback chub and sustain angling;

(ii) Ensuring the recreational fishing population does not detrimentally impact the six core populations of

humpback chub through such factors as disease or genetic drift; and

(iii) Monitoring to ensure there are no detrimental effects to the humpback chub population from angling.

(6) The Service and all applicable State, Federal, and tribal landowners must approve, in advance and in writing, any new recreational fishery for humpback chub.

(F) *Chemical treatments to support humpback chub.* A qualified person may take humpback chub by performing a chemical treatment in accordance with Federal, State, and tribal regulations that would support the conservation and recovery of humpback chub, provided that reasonable care is practiced to minimize the effects of such taking.

(1) For treatments upstream of occupied humpback chub habitat:

(i) Service approval is not required; and

(ii) Care should be taken to limit the potential for fish toxicants and piscicides travelling beyond treatment boundaries and impacting humpback chub.

(2) For treatments in known or potentially occupied humpback chub habitat:

(i) The Service must approve, in advance and in writing, any treatment; and

(ii) Care should be taken to perform robust salvage efforts to remove any humpback chub that may occur in the treatment area before the treatment is conducted.

(3) Whenever possible, humpback chub that are salvaged should be moved to a location that supports recovery of the species.

(G) *Reporting and disposal requirements.* Any mortality of humpback chub associated with the actions authorized under this special rule must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports in the upper basin (upstream of Glen Canyon Dam) must be made to the Service's Mountain-Prairie Region Law Enforcement Office, or the Service's Upper Colorado River Endangered Fish Recovery Office. Reports in the lower basin (downstream Glen Canyon Dam) must be made to the Service's Southwest Region Law Enforcement Office, or the Service's Arizona Fish and Wildlife Conservation Office. Contact information for the Service's regional offices is set forth at 50 CFR 2.2. The Service may allow additional reasonable time for reporting if access to these offices is limited due to office closure or if the activity was conducted in area

without sufficient communication access.

* * * * *

Dated: December 10, 2019.

Margaret E. Everson,

Principle Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director for the U.S. Fish and Wildlife Service.

[FR Doc. 2020-00512 Filed 1-21-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS-HQ-MB-2019-0103; FF09M29000-190-FXMB1232090000]

RIN 1018-BE67

Migratory Bird Permits; Management of Double-Crested Cormorants (*Phalacrocorax auritus*) Throughout the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; intent to prepare a National Environmental Policy Act document.

SUMMARY: This document advises the public that we, the U.S. Fish and Wildlife Service, intends to gather information necessary to develop a proposed rule to expand management of double-crested cormorants (*Phalacrocorax auritus*) throughout the United States, and prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. We are furnishing this advance notice of proposed rulemaking to advise other agencies and the public of our intentions; obtain suggestions and information on the scope of issues to include in the environmental review; and announce public scoping webinars to occur in 2020.

DATES:

Comment submission: Public scoping will begin with the publication of this document in the **Federal Register** and will continue through March 9, 2020. We will consider all comments on the scope of the draft environmental review that are received or postmarked by that date. Comments received or postmarked after that date will be considered to the extent practicable.

Scoping meetings: We will hold public scoping meetings in the form of multiple webinars that will occur in February 2020. We will announce exact webinar dates, times, and registration

details on the internet at <https://www.fws.gov/birds/management/managed-species/double-crested-cormorants.php>.

ADDRESSES: You may submit written comments by one of the following methods. Please do not submit comments by both.

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-HQ-MB-2019-0103.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-HQ-MB-2019-0103; U.S. Fish and Wildlife Service Headquarters, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We do not accept email or faxes. We will post all comments on <http://www.regulations.gov>, including any personal information you provide.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service, at 202-208-1050.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated with the primary responsibility for managing migratory birds. Our authority derives from the Migratory Bird Treaty Act of 1918, as amended (MBTA), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russia Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are at 50 CFR part 21.

The double-crested cormorant (*Phalacrocorax auritus*, [cormorants]) is a fish-eating migratory bird that is distributed across a large portion of North America. There are five different breeding populations of cormorants, variously described by different authors as the Alaska, Pacific Coast, Interior, Atlantic, and Southern populations. Cormorant populations have exhibited increasing abundance over the last few decades. In response to ongoing damage at aquaculture facilities and other damage and conflicts associated with increasing cormorant populations, the Service administered regulations that included an Aquaculture Depredation Order (which was located at 50 CFR 21.47) and a Public Resource Depredation Order (which was located

at 50 CFR 21.48) from October 2003 until May of 2016.

The Aquaculture Depredation Order eliminated individual permit requirements in 13 States for private individuals, corporations, State agencies, and Federal agencies taking cormorants at aquaculture facilities. The Public Resource Depredation Order enabled States, Tribes, and the U.S. Department of Agriculture's Wildlife Services in 24 States, without individual depredation permits, to take cormorants found committing or about to commit, and to prevent, depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats. In May of 2016, the depredation orders were vacated by the United States District Court for the District of Columbia. The Court concluded that the Service did not sufficiently consider the effects of the depredation orders on cormorant populations and other affected resources and failed to consider a reasonable range of alternatives in the review within the environmental assessment issued under the National Environmental Policy Act of 1969, as amended (NEPA), in 2014. The authority for authorizing lethal take of depredating cormorants reverted back to the issuance of individual depredation permits pursuant to 50 CFR 21.41.

Conflicts in aquatic systems continue to exist between cormorants and fish stocks managed by Federal, State, and Tribal agencies as recreational and/or commercial fisheries, or for species-conservation purposes. Cormorant predation of fish also occurs at aquaculture facilities and private recreational lakes and ponds. Birders and other interested parties value cormorants for their aesthetic and existential values.

The Service is responsible for determining the maximum amount of lethal take of cormorants to allow in order to minimize conflicts in aquatic systems, while maintaining sustainable populations of cormorants and minimizing the regulatory burden on Federal and State agencies and individual citizens. In the process of making this decision, the Service wants to use an effective and transparent decision-making process that ensures collaboration among migratory bird and fisheries management programs, fulfills Tribal trust and subsistence responsibilities, adheres to legal and regulatory requirements under NEPA, and addresses key biological uncertainties. When determining total allowable take, the Service must consider uncertainty related to

cormorant population dynamics, estimated maximum sustainable harvest, and risk of over-exploitation. Furthermore, the Service and stakeholders must identify appropriate monitoring requirements that ensure progress toward stated objectives and inform future decisions regarding total allowable take.

Public Scoping

A primary purpose of the NEPA scoping process is to receive suggestions and information on the scope of issues and alternatives to consider when drafting the environmental documents and to identify significant issues and reasonable alternatives related to the Service's proposed action. In order to ensure that we identify a range of issues and alternatives related to the proposed action, we invite comments and suggestions from all interested parties. We will conduct a review of this proposed action according to the requirements of NEPA and its regulations, other relevant Federal laws, regulations, policies, and guidance, and our procedures for compliance with applicable regulations. Once the environmental documents are completed, we will offer further opportunities for public comment.

Proposed Action and Possible Alternatives

The Service has collaborated with State fish and wildlife agencies, Tribes, and Federal partners in further addressing cormorant conflicts including aquaculture and wild and stocked fisheries. In this rulemaking action, we propose these long-term solutions to cormorant conflicts:

(1) Establish a new permit for State wildlife agencies for authorizing certain cormorant management and control activities that are normally prohibited and are intended to relieve or prevent impacts from cormorants on wild and stocked fisheries, aquaculture facilities, human health and safety, property, and threatened and endangered species (as listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)). States would have the delegated authority to determine whether, when, where, and for what purposes to control cormorants within limits set by the Service.

(2) Establish an aquaculture depredation order, which would allow take of cormorants under prescribed conditions at aquaculture facilities without the need to acquire an individual permit.

(3) Both (1) and (2) in combination.

The proposed action presented in the environmental analysis will be

compared to the no-action alternative. The no-action alternative will compare estimated future conditions without implementation of the alternatives listed here to the estimated future conditions with those alternative actions in place (*i.e.*, issuance of individual depredation permits pursuant to 50 CFR 21.41).

Information Requested

Issues Related to the Scope of the NEPA Review

We seek comments or suggestions from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties. To promulgate a proposed rule and prepare a draft environmental review pursuant to NEPA, we will take into consideration all comments and any additional information received. To ensure that any proposed rulemaking effectively evaluates all potential issues and impacts, we are seeking comments and suggestions on the following for consideration in preparation of additional management for double-crested cormorants:

- a. Assessment of interest in use of a new special permit by States and Tribes;
- b. Appropriate limitations to cormorant management and control activities, such as season, scope, and magnitude of expected lethal take; and
- c. Potential reporting and monitoring strategies of cormorants by States and participating Tribes.

The Service will act as the lead Federal agency responsible for completion of the environmental review. Therefore, we are seeking comments on the identification of direct, indirect, beneficial, and adverse effects that might be caused by additional management for double-crested cormorants. You may wish to consider the following issues when providing comments:

- a. Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;
- b. Impacts on park lands and cultural or historic resources;
- c. Impacts on human health and safety;
- d. Impacts on air, soil, and water;
- e. Impacts on prime agricultural lands;
- f. Impacts to other species of wildlife, including endangered or threatened species;

g. Disproportionately high and adverse impacts on minority and low-income populations;

h. Any other potential or socioeconomic effects; and

i. Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the environmental analysis, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Headquarters (see **ADDRESSES**, above).

Scoping Meetings

See **DATES** for information about upcoming scoping webinars. The purpose of scoping webinars is to provide the public with a general understanding of the background of the proposed rule, alternatives and activities it would cover, alternative proposals under consideration, and the Service's role and steps to be taken to develop the draft environmental analysis for the proposed action. Additionally, the purpose of these meetings and public comment period is to solicit suggestions and information on the scope of issues and alternatives for the Service to consider when preparing the draft environmental documents. Oral comments will be accepted at the webinars.

Comments can also be submitted by methods listed in **ADDRESSES**. Once the draft environmental documents and proposed rule are complete and made available for review, there will be additional opportunity for public comment on the content of these documents through an additional comment period.

Scoping Webinar Accommodations

Please note that the Service will ensure that the public scoping webinars will be accessible to members of the public with disabilities.

Public Comments

To promulgate a proposed rule and prepare a draft environmental review pursuant to NEPA, we will take into consideration all comments and any additional information received. Please note that submissions merely stating support for or opposition to the proposed action and alternatives under consideration, without providing supporting information, will be noted but not considered by the Service in making a determination. Please consider the following when preparing your comments:

- a. Be as succinct as possible.
- b. Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.
- c. State suggestions and recommendations clearly with an expectation of what you would like the Service to do.
- d. If you propose an additional alternative for consideration, please provide supporting rationale and why you believe it to be a reasonable alternative that would meet the purpose and need for our proposed action.
- e. If you provide alternate interpretations of science, please support your analysis with appropriate citations.

The alternatives we develop will be analyzed in our draft environmental review pursuant to NEPA. We will give separate notice of the availability of the draft environmental review for public comment when it is completed. We may hold public hearings and informational sessions so that interested and affected people may comment and provide input into the final decision.

Authority

The authority for this action is the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: December 6, 2019.

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020-00616 Filed 1-21-20; 8:45 am]

BILLING CODE 4333-15-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. USDA-2020-0001]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of Safety, Security and Protection.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Safety, Security and Protection's (OSSP) intention to request an extension for and revision to a currently approved information collection for US Department of Agriculture (USDA) Personal Identity Verification (PIV) Request for Credential, the USDA Homeland Security Presidential Directive 12 (HSPD-12) program. HSPD-12 establishes a mandatory, Government-wide standard for secure and reliable forms of identification (credentials) issued by the Federal Government to its Federal Employees, Non-Federal employees and contractors. The Office of Management and Budget (OMB) mandated that these credentials be issued to all Federal Government employees, contractors, and other applicable individuals who require long-term access to federally controlled facilities and/or information systems. The HSPD-12 compliant program is jointly owned and administered by the Office of the Chief Information Officer (OCIO) and OSSP.

ADDRESSES: Office of Safety, Security and Protection invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or

attach a file for lengthier comments. Go to <https://www.regulations.gov/docket?D=USDA-2020-0001>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Office of Safety, Security and Protection, 1400 Independence Ave. SW, Suite 12B, Washington, DC 20250-3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Ave. SW, Suite 12B, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name: the Office of Safety, Security and Protection. The item must also include the Docket number USDA-2020-0001. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, go to the Office of Safety, Security and Protection, 1400 Independence Ave. SW, Suite 12B, Washington, DC 20250-3700 between 8:00 a.m. and 3:00 p.m., Monday through Friday.

DATES: Comments on this notice must be received by March 23, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Joseph Reale, Director, Facility Protection Division, Office of Safety, Security and Protection U.S. Department of Agriculture, Whitten Building, 1400 Independence Ave. SW, Suite 12B, Washington, DC 20250, 202-720-3901.

SUPPLEMENTARY INFORMATION:

Title: USDA PIV Request for Credential.

OMB Number: 0505-0022.

Expiration Date of Approval: April 30, 2020.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The HSPD-12 information collection is required for establishing the applicant's identity for PIV credential issuance. The information requested must be provided by Federal employees, contractors and other applicable individuals when applying for a USDA credential (identification card). This information collection is

necessary to comply with the requirements outlined in Homeland Security Presidential Directive (HSPD) 12, and Federal Information Processing Standard (FIPS) 201-2. USDA must implement an identity proofing, registration, and issuance process consistent with the requirements outlined in FIPS 201-2. This information collection form was required as part of USDA's identity proofing and registration process. After 10/27/06, form AD 1197 has been eliminated and the identity process has been streamlined with the addition of a Web-based HSPD-12 system. As USDA continues the HSPD-12 program, one estimate of burden has been calculated and one process description has been included.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours. The Burden is estimated based on the three prerequisites for PIV Credential issuance as well as the receipt of the PIV Credential itself.

Respondents: New long-term contractors, affiliates, and employees must undergo the information collection process. Existing contractors/employees/affiliates must undergo the process to receive a PIV Credential.

Estimated Number of Respondents: Estimated Annual Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: Each respondent should complete one response.

Estimated Total One-Time Burden on Respondents: 18,000 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Joseph Reale. All comments received will be available

for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

David Wu,

Acting Assistant Secretary of Administration.

[FR Doc. 2020-00769 Filed 1-21-20; 8:45 am]

BILLING CODE 3412-BA-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 16, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602.

Comments regarding these information collections are best assured of having their full effect if received by February 21, 2020. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to

the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Fruit Crops.

OMB Control Number: 0581-0189.

Summary of Collection: Marketing orders and marketing agreements are authorized by the Agricultural Marketing Agreement Act (AMAA) of 1937 (U.S.C. 601-674; Act). This legislation permits the regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate and intrastate commerce and improving returns to producers. Marketing Order programs provide an opportunity for producers of fresh fruits vegetables and specialty crops in specified production areas, to work together to solve marketing problems that cannot be solved individually. Marketing order regulations help ensure adequate supplies of high-quality product and adequate returns to producers. Under the market orders, producers and handlers are nominated by their respective peers and serve as representatives on their respective committees/boards.

Need and Use of the Information: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing orders. The Agricultural Marketing Service (AMS) requires several forms to be filed to enable the administration of each marketing order. These include forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing orders. If this information collection was not conducted, not only would the Secretary lose his ability to administer the marketing orders, but the respective committees also would have no way of monitoring industry compliance with their respective marketing order and agreement. They would also not be able to determine the assessments due from industry handlers and growers, which would negatively impact any market research and promotion activities.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 6,800.

Frequency of Responses:

Recordkeeping; Reporting; on Occasion, Quarterly; Biennially; Weekly; Semi-annually; Monthly; Annually.

Total Burden Hours: 7,780.

Agricultural Marketing Service

Title: National Organic Program.

OMB Control Number: 0581-0191.

Summary of Collection: The Organic Foods Production Act of 1990 (OFPA) as amended (7 U.S.C. 6501-6522) mandates that the Secretary of Agriculture develop a National Organic Program (NOP) to accredit eligible State government, State officials or private person as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in OFPA. The purposes of the regulation mandated by OFPA are: (1) To establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced. The NOP regulation fulfills the requirements of the OFPA. It includes comprehensive production and handling standards, labeling provisions, requirements for the certification of producers and handlers, accreditation of certifying agents by USDA and an administrative subpart for fees, State Programs, National List, appeals, compliance and pesticide residue testing. The Agricultural Marketing Service will approve programs for State governments wishing to establish State Organic Programs.

Need and Use of the Information: The information collected is used by USDA, State program governing State officials, and certifying agents. The information is used to evaluate compliance with OFPA and NOP for administering the program, for management decisions and planning, for establishing the cost of the program and to support any administrative and regulatory actions in response to non-compliance with OFPA. Certifying agents will have to submit an application to USDA to become accredited to certify organic production and handling operations. Auditors will review the application, perform site evaluation and submit reports to USDA, who will make a decision to grant or deny accreditation. Producers, handlers and certifying agents whose operations are not approved have the right to mediation and appeal the decision. Reporting and recordkeeping are essential to the integrity of the organic certification system. If the collection of information was not conducted, the AMS would not be able to carry out the intent of Congress as it enforces the OFPA.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 50,025.

Frequency of Responses: Reporting: Annually; Recordkeeping.

Total Burden Hours: 5,667,276.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020-00943 Filed 1-21-20; 8:45 am]

BILLING CODE 3410-02-P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Thursday January 30, 2020, 10:30 a.m. EDT.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Mauro Morales: (202) 376-7796; TTY: (202) 376-8116; *publicaffairs@usccr.gov*.

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only: 1-800-6357637, Conference ID 936-8854. Persons with disabilities who need accommodation should contact Pamela Dunston at (202) 376-8105 or at *access@usccr.gov* at least seven (7) business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

- A. Discussion and vote on Chair for Arkansas Advisory Committee to the Commission
- B. Discussion and vote on timeline, discovery plan, and outline for Commission project on maternal health disparities
- C. Management and Operations
 - Staff Director's Report

III. Adjourn Meeting

Dated: January 16, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020-01045 Filed 1-17-20; 11:15 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Monthly Retail Surveys.

OMB Control Number: 0607-0717.

Form Number(s): MRTS: SM-44(17)S, SM-44(17)SE, SM-44(17)SS, SM-44(17)B, SM-44(17)BE, SM-44(17)BS, SM-72(17)S, and SM-20(17)I; MARTS: SM-44(17)A, SM-44(17)AE, SM-44(17)AS, and SM-72(17)A.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 13,000.

Average Hours per Response: 7 minutes.

Burden Hours: 18,200.

Needs and Uses: The U.S. Census Bureau requests an extension of the Monthly Retail Surveys (MRS). The MRS is comprised of two surveys known as the Monthly Retail Trade Survey (MRTS) and the Advance Monthly Retail Trade Survey (MARTS). The MRS are administered monthly to a sample of employer firms (*i.e.*, businesses with paid employees) with establishments located in the United States and classified in retail trade and/or food services sectors as defined by the North American Industry Classification System (NAICS).

The MRTS provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States. In addition, the survey also provides an estimate of monthly sales at food service establishments and drinking places.

Sales, inventories, and e-commerce data provide a current statistical picture of the retail portion of consumer activity. The sales and inventories estimate in the MRTS measure current trends of economic activity that occur in the United States. The survey estimates provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis. The Bureau of Economic Analysis (BEA) uses these data in determining the consumption portion of Gross Domestic Product (GDP).

The MARTS, a subsample of MRTS, began in 1953 as a monthly survey for

activity taking place during the previous month. The MARTS was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity in the United States. Retail sales are one of the primary measures of consumer demand for both durable and non-durable goods. The MARTS also provide an estimate of monthly sales at food service establishments and drinking places.

The estimates produced in the MRS are critical to the accurate measurement of total economic activity. The estimates of retail sales represent all operating receipts, including receipts from wholesale sales made at retail locations and services rendered as part of the sale of the goods, by businesses that primarily sell at retail. The sales estimates include sales made on credit as well as on a cash basis but exclude receipts from sales taxes and interest charges from credit sales. Also excluded is non-operating income from such services as investments and real estate.

The estimates of merchandise inventories owned by retailers represent all merchandise located in retail stores, warehouses, offices, or in transit for distribution to retail establishments. The estimates of merchandise inventories exclude fixtures and supplies not held for sale, as well as merchandise held on consignment owned by others. The BEA use inventories data to determine the investment portion of the GDP. We publish retail sales and inventories estimates based on the NAICS.

Sales data for select industries are released in the press release "Advance Monthly Sales for Retail Trade and Food Services," approximately 15 days after the close of the reference month, which also includes more detailed estimates for the prior month. Advance inventory estimates for 3 aggregate levels are released in the "Advance Economic Indicator Report" approximately 27 days after the close of the reference month and the preliminary estimates for inventories data are released in the "Manufacturing and Trade Inventories and Sales" approximately 40 days after the reference month.

Retail e-commerce sales are estimated from the same sample used to estimate preliminary and final U.S. retail sales. For coverage of the universe of e-commerce retailers, research was conducted to ensure that retail firms selected in the MRTS sample engaged in e-commerce. E-commerce sales estimates are released quarterly as part of the "Quarterly Retail Ecommerce Sales" report, approximately 50 days following the reference period.

Below are the retail form numbers along with a description of each form.

MRTS FORMS

| Series | Description |
|-------------------|--|
| SM-44(17)S | Non-Department Store/Sales Only/WO E-Commerce. |
| SM-44(17)SE | Non-Department Store/Sales Only W E-Commerce. |
| SM-44(17)SS | Non-Department Store/Sales Only/Screenener. |
| SM-44(17)B | Non-Department Store/Sales and Inventory/WO E-Comm. |
| SM-44(17)BE | Non-Department Store/Sales and Inventory/W E-Comm. |
| SM-44(17)BS | Non-Department Store/Sales and Inventory/Screenener. |
| SM-72(17)S | Food Services/Sales Only/WO E-Commerce. |
| SM-20(17)I | Non-Department and Department Store/Inventory Only. |

MARTS FORMS

| Series | Description |
|-------------------|--|
| SM-44(17)A | Non-Department Store/Sales Only/WO E-Commerce. |
| SM-44(17)AE | Non-Department Store/Sales Only W E-Commerce. |
| SM-44(17)AS | Non-Department Store/Sales Only/Screenener. |
| SM-72(17)A | Food Services/Sales Only/WO E-Commerce. |

Each MRS form has two versions: One with an "E" suffix and one with an "A" Suffix. The forms are identical, except that those with the "E" suffix are sent to smaller firms (which we refer to internally as "EINs"), while those with the "A" suffix are sent to larger firms, which we refer to internally as "alphas". Thus, there are a total of 24 variants of forms along with their fax counterparts. Forms can be found at https://www.census.gov/retail/get_forms.html.

The U.S. Census Bureau tabulates the collected data to provide, with measured reliability, statistics on United States retail sales. These estimates are especially valued by data users because of their timeliness.

The sales estimates are used by the BEA, Council of Economic Advisers (CEA), Federal Reserve Board (FRB), Bureau of Labor Statistics (BLS), and other government agencies, as well as business users in formulating economic decisions.

BEA is the primary Federal user of data collected in the Monthly Retail Surveys. BEA uses the information in its preparation of the National Income and Products Accounts (NIPA), and its benchmark and annual input-output tables. Data on retail sales are used to prepare monthly estimates of the personal consumption expenditures (PCE) component of gross domestic product for all PCE goods categories, except tobacco, prescription drugs, motor vehicles, and gasoline and other motor fuel. These estimates are also published each month in the Personal Income and Outlays press release. If the survey were not conducted, BEA would

lack comprehensive data from the retail sector. This would adversely affect the reliability of the NIPA and GDP. Production of the NIPA figures also require inventory figures in order to publish the monthly inventory to sales ratios. Additionally, they use MRS inventory figures to measure changes in inventories for estimates of gross output in the annual Input-Output Accounts tables, as well as for computing annual and quarterly GDP-by-industry statistics.

BLS uses the data as input to their Producer Price Indexes and in developing productivity measurements. The data are also used for gauging current economic trends of the economy. BLS uses the estimates to develop consumer price indexes used in inflation and cost of living calculations.

CEA, other government agencies, and businesses use the survey results to formulate and make decisions. CEA reports the retail data, one of the principal federal economic indicators, to the President each month for awareness on the current picture on the "state of the economy". In addition, CEA's Macroeconomic Forecaster uses the retail sales data, one of the key monthly data releases each month, to keep track of real economic growth in the current quarter.

Policymakers such as the FRB need to have the timeliest estimates in order to anticipate economic trends and act accordingly.

Private businesses use the retail sales and inventories data to compute business activity indexes. The private sector also uses retail sales as a reliable indicator of consumer activity. In

addition, businesses use the estimates to measure how they are performing and predict future demand for their products.

Affected Public: Business and other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-00979 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of State Government Research and Development

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision and extension of the Survey of State Government Research and Development, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before March 23, 2020.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233 (or via the internet at PRAComments@doc.gov). You may also submit comments, identified by Docket Number USBC-2019-0021, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Flaherty, U.S. Census Bureau, HQ-6H051, 4600 Silver Hill Rd., Suitland, MD 20746, (301) 763-7699 (or via the internet at michael.j.flaherty@census.gov).

SUPPLEMENTARY INFORMATION

I. Abstract

The United States Census Bureau plans to make revisions to the Survey of State Government Research and Development (SGRD). The Census Bureau conducts the SGRD to measure research and development performed and funded by state government agencies in the United States. The Census Bureau conducts the survey on behalf of the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation.

The National Science Foundation Act of 1950, as amended, includes a statutory charge to “provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and

to provide a source of information for policy formulation by other agencies in the Federal Government.” This mandate was further codified in the America COMPETES Reauthorization Act of 2010 § 505, which requires NCSES to “collect, acquire, analyze, report, and disseminate . . . statistical data on (A) research and development trends . . .” Under the aegis of these legislative mandates, NCSES has sponsored surveys of research and development (R&D) since 1951, including the SGRD since 2006. The Census Bureau’s authorization to undertake this work is found at 13 U.S.C. Section 8(b) which provides that the Census Bureau “may make special statistical compilations and surveys for departments, agencies, and establishments of the Federal government, the government of the District of Columbia, the government of any possession or area (including political subdivisions thereof) . . . State or local agencies, or other public and private persons and agencies.”

The SGRD is the only comprehensive source of state government research and development expenditure data collected on a nationwide scale using uniform definitions, concepts, and procedures. The collection covers the expenditures of all agencies in the fifty state governments, the District of Columbia, and Puerto Rico that perform or fund R&D. The NCSES coordinates with the Census Bureau for the data collection. The NCSES uses this collection to satisfy, in part, its need to collect research and development expenditures data.

Fiscal data provided by respondents aid data users in measuring the effectiveness of resource allocation. The products of this data collection make it possible for data users to obtain information on such things as expenditures according to source of funding (e.g., federal funds or state funds), by performer of the work (e.g., intramural and extramural to state agencies), by function (e.g., agriculture, energy, health, transportation, etc.), by type of work (e.g., basic research, applied research, or experimental development) for intramural performance of R&D, and by R&D plant (e.g., construction projects). Final results produced by NCSES contain state and national estimates useful to a variety of data users interested in research and development performance including: The National Science Board; the Office of Management and Budget; the Office of Science and Technology Policy and other science policy makers; institutional researchers; and private organizations.

Beginning with the 2020 survey (planned launch late summer, 2020), we plan to ask for head counts and full-time equivalent (FTEs) for agency personnel who perform R&D. Adding these new questions to the SGRD will improve measures of the national R&D workforce. Based on record-keeping interviews with business respondents to similar questions, we do not anticipate that these two questions will add any substantive burden to respondents. We have added approximately 200 state agencies to the survey frame of agencies with the potential to perform or fund R&D activities. Adding these 200 agencies will result in a 400-hour increase in the survey’s total burden hour estimate.

The survey announcements and forms used in the SGRD are:

Survey Announcement. An introductory letter from the Directors of the NCSES and the Census Bureau is mailed to the Governor’s Office to announce the survey collection and to solicit assignment of a State Coordinator. The State Coordinator’s Announcement is sent electronically at the beginning of each survey period to solicit assistance in identifying state agencies which may perform or fund R&D activities.

Form SRD-1. This form contains item descriptions and definitions of the research and development items collected by the Census Bureau on behalf of the NCSES. All states supply their data by electronic means.

II. Method of Collection

The Census Bureau mails the 50 state governors, the mayor of DC, and the governor of Puerto Rico a letter requesting that they appoint a state coordinator for the survey. They are asked to respond within 30 days. The Census Bureau then emails the state coordinators a spreadsheet asking them to identify state agencies that may be active R&D performers. State coordinators are asked to respond within 30 days. The Census Bureau subsequently emails the survey form to each state agency identified by the respective state coordinators. The form contains embedded data checks and auto-summing functionality. Agencies are asked to complete and email back the form within 60 days. Alternatively, agencies are able to report to the Census Bureau by telephone.

III. Data

OMB Control Number: 0607-0933.

Form Number(s): SRD-1.

Type of Review: Regular submission.

Affected Public: State government agencies.

Estimated Number of Respondents: 51 governors, 1 mayor, 52 state coordinators, and approximately 700 state government agencies.

Estimated Time per Response: 5 minutes for each governor, 1 hour for each state coordinator, and 2 hours for each state agency surveyed.

Estimated Total Annual Burden Hours: 1,456.

Estimated Total Annual Cost to Public: \$0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: National Science Foundation Act of 1950 as amended and the America COMPETES Reauthorization Act of 2010, Title 42 U.S.C. 1861–76; Title 13, U.S.C. Section 8(b).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00978 Filed 1–21–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia) to correct two ministerial errors.

DATES: Applicable January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, 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) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2019, Commerce published the *Final Results* of the administrative review of the AD order on MSG from Indonesia covering the November 1, 2016 through October 31, 2017 period of review (POR).¹ On August 6, 2019, Ajinomoto Health & Nutrition North America (Ajinomoto),² the petitioner in the underlying AD investigation, and PT. Cheil Jedang Indonesia and U.S. sales affiliate CJ America Inc. (collectively, CJ Indonesia), the sole respondent in this administrative review, each timely filed ministerial error allegations concerning the *Final Results*.³ On August 12, 2019, CJ Indonesia timely filed a rebuttal to Ajinomoto's allegation.⁴ No interested party commented on CJ Indonesia's allegation.

¹ See *Monosodium Glutamate from the Republic of Indonesia: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 84 FR 37625 (August 1, 2019) (*Final Results*).

² Formerly known as Ajinomoto North America Inc.

³ See Ajinomoto's Letter, "MSG from Indonesia: Ministerial Error Comments," dated August 6, 2019; see also CJ Indonesia's Letter, "Monosodium Glutamate ("MSG") from Indonesia; 3rd Administrative Review; CJ Ministerial Error Comments," dated August 6, 2019.

⁴ See CJ Indonesia's Letter, "Monosodium Glutamate ("MSG") from Indonesia; Reply to Petitioner's Ministerial Error Comments," dated August 12, 2019.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from the inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial."⁵ With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce "will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . ."

Ministerial Errors

Commerce committed two inadvertent errors in CJ Indonesia's final dumping margin within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) by: (1) Failing to apply the average-to-transaction comparison method as a result of its "differential pricing" analysis when determining the appropriate comparison method to use in comparing weighted-average normal values to weighted-average export prices (or constructed export prices); and (2) making an error in a currency calculation when calculating the CEP Offset for CJ Indonesia. Accordingly, Commerce determines that, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), it made two ministerial errors in the *Final Results*. Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to correct these two errors. These corrections result in a change to CJ Indonesia's weighted-average dumping margin. For a detailed discussion of Ajinomoto's and CJ Indonesia's ministerial error allegations, as well as Commerce's analysis, see the Ministerial Error Memorandum.⁶

Amended Final Results of Administrative Review

As a result of correcting the two ministerial errors described above, Commerce determines that the following weighted-average dumping margin for CJ Indonesia exists for the period November 1, 2016 through October 31, 2017:

⁵ See 19 CFR 351.224(f).

⁶ See Memorandum, "Ministerial Error Memorandum for the Final Results of the 2016–2017 Antidumping Duty Administrative Review of Monosodium Glutamate from the Republic of Indonesia," dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum).

| Exporter/producer | Weighted-average dumping margin (percent) |
|----------------------------------|---|
| PT. Cheil Jedang Indonesia | 0.71 |

Disclosure

We intend to disclose the calculations performed for these amended final results in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

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 these amended final results of the administrative review.

Pursuant to 19 CFR 351.212(b)(1), CJ Indonesia reported the entered value of its U.S. sales such that 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 an importer-specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.⁷

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 2019, the date of publication of the *Final Results* of this administrative review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for CJ Indonesia will be that established in these amended final results; (2) for previously reviewed or investigated companies, including those for which Commerce may have determined had no shipments during the POR, the cash deposit rate will continue to be the company-specific 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 or review (or in an earlier review), or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established in the most recently-completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 6.19 percent, the all-others rate established in the LTFV investigation.⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice 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 or 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

These amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

⁸ See *Monosodium Glutamate from the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value*, 79 FR 58329 (September 29, 2014).

Dated: January 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-00950 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-559-808, A-469-819]

Acetone From Singapore and Spain: Correction to Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the antidumping duty orders on acetone from Singapore and Spain to state the correct date on which the provisional suspension of liquidation measures expired.

DATES: Applicable January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua DeMoss at (202) 482-3362 (Singapore) or Preston Cox at (202) 482-5041 (Spain), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 20, 2019, Commerce published antidumping duty orders on acetone from Singapore and Spain.¹ In the *Orders*, Commerce inadvertently stated an incorrect date for the date on which the provisional suspension of liquidation measures expired. Specifically, December 3, 2019, was incorrectly published as the date on which the provisional measures expired. Commerce is correcting the *Orders* to clarify that December 2, 2019 is the date on which the provisional suspension of liquidation measures expired.

This correction to the *Orders* is published in accordance with sections 733(d) and 736(a) of the Tariff Act of 1930, as amended.

Dated: January 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-00952 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-DS-P

¹ See *Acetone from Singapore and Spain: Antidumping Duty Orders*, 84 FR 70146 (December 20, 2019) (*Orders*).

⁷ See section 751(a)(2)(C) of the Act.

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-110; C-570-111]

Vertical Metal File Cabinets From the People's Republic of China: Correction to Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the antidumping (AD) and countervailing duty (CVD) orders on certain vertical metal file cabinets (file cabinets) from the People's Republic of China (China).

DATES: Applicable January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, 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) 482-5484.

SUPPLEMENTARY INFORMATION: On December 13, 2019, Commerce published in the *Federal Register* the AD and CVD orders on file cabinets from China.¹ Pursuant to section 703(d) of the Tariff Act of 1930, as amended (the Act), suspension of liquidation instructions issued pursuant to an affirmative preliminary CVD determination may not remain in effect for more than four months. In addition, pursuant to section 733(d) of the Act, suspension of liquidation instructions issued pursuant to an affirmative preliminary AD determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. In the *Orders*, we erroneously stated that the four-month period, beginning on the date of publication of the *Preliminary Determinations*,² ended

on December 1, 2019.³ However, the last day of the 120-day period, beginning on the date of publication of the *Preliminary Determinations*, was November 28, 2019.

Therefore, unliquidated entries of file cabinets from China entered, or withdrawn from warehouse, for consumption on or after August 1, 2019, the date of publication of the *Preliminary Determinations*, are subject to the assessment of AD and CVD duties, but such duties will not be assessed on entries occurring after the expiration of the provisional measures period at midnight on the last day, November 28, 2019, and before publication of the ITC's final affirmative injury determination. No other changes have been made to the *Orders*.

These corrected orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: January 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-00953 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-122-853]

Citric Acid and Certain Citrate Salts From Canada: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Jungbunzlauer Canada, Inc. (JBL Canada), a producer/exporter of citric acid and certain citrate salts (citric acid) from Canada, did not sell subject merchandise at prices below normal value during the period of review (POR) May 1, 2018 through April 30, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Joseph Dowling or George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1646 or (202) 482-2623, respectively.

SUPPLEMENTARY INFORMATION:

³ See *Orders*, 84 FR at 68121-22.

Background

On July 15, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative review of the antidumping duty order on citric acid from Canada.¹

Scope of the Order

The merchandise covered by the *Order*² is citric acid and certain citrate salts from Canada. The product is currently classified under subheadings 2918.14.0000, 2918.15.1000, 2918.15.5000, and 3824.90.9290 of the Harmonized Tariff System of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of merchandise subject to the scope is dispositive. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.³

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. 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 at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739 (July 15, 2019).

² See *Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders*, 74 FR 25703 (May 29, 2009) (*Order*).

³ See Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Canada; 2018-2019," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

¹ See *Vertical Metal File Cabinets From the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 FR 68121 (December 13, 2019) (*Orders*). The period of investigation for the AD investigation was October 1, 2018 through March 31, 2019. The period of investigation for the CVD investigation was January 1, 2018 through December 31, 2018.

² See *Vertical Metal File Cabinets from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value*, 83 FR 37618 (August 1, 2019); see also *Vertical Metal File Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 37622 (August 1, 2019) (collectively, *Preliminary Determinations*).

Preliminary Results of the Review

As a result of this review, Commerce preliminarily determines that the following weighted-average dumping margin exists for the period May 1, 2018 through April 30, 2019:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---------------------------------|---|
| Jungbunzlauer Canada, Inc | 0.00 |

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.⁴ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁵ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS.⁶

All submissions to Commerce must be filed electronically using ACCESS, and must also be served on interested parties.⁷ An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.⁸ Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.⁹

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁰

If JBL Canada's calculated weighted-average dumping margin is above *de minimis* (i.e., greater than or equal to 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer, and we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. If JBL Canada's weighted-average dumping margin continues to be zero or *de minimis*, or the importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.¹¹

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by JBL Canada for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate.¹²

We intend to issue instructions to CBP 41 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results

of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JBL Canada will be the rate established in the final results of this review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1) (i.e., less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently-completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.21 percent, the all-others rate established in the less-than-fair-value investigation.¹³ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 15, 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. Scope of the Order
- IV. Discussion of the Methodology

¹³ See *Order*, 74 FR at 25704.

⁴ See 19 CFR 351.309(c)(1)(ii).

⁵ See 19 CFR 351.309(d).

⁶ See 19 CFR 351.303.

⁷ See 19 CFR 351.303(f).

⁸ See 19 CFR 351.310(c).

⁹ See section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

¹⁰ See 19 CFR 351.212(b)(1).

¹¹ See 19 CFR 351.106(c)(2).

¹² For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

V. Recommendation

[FR Doc. 2020-00954 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-846]

Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 15, 2020.

SUMMARY: The Department of Commerce (Commerce) and a representative of the Government of Mexico (GOM) have signed an amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement). The amendment to the CVD Agreement modifies the definitions for sugar from Mexico, modifies the restrictions of the volume of direct or indirect exports to the United States of sugar from all Mexican producers/exporters, and provides for enhanced monitoring and enforcement mechanisms.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell at (202) 482-0162 or (202) 482-0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2014, Commerce initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930, as amended (the Act), to determine whether manufacturers, producers, or exporters of sugar from Mexico receive subsidies.¹ On August 25, 2014, Commerce preliminarily determined that countervailable subsidies are being provided to producers and exporters of sugar from Mexico and aligned the final countervailing duty determination with the final antidumping duty determination.²

¹ See *Sugar from Mexico: Initiation of Countervailing Duty Investigation*, 79 FR 22790 (April 24, 2014).

² See *Sugar from Mexico: Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Determination with Final Antidumping Duty Determination*, 79 FR 51956 (September 2, 2014).

Commerce and the GOM signed the CVD Agreement on December 19, 2014.³

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified Commerce that they had petitioned the International Trade Commission (ITC) to conduct a review of the CVD Agreement under section 704(h) of the Act to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the CVD Agreement. On March 24, 2015, in a unanimous vote, the ITC found that the CVD Agreement eliminated completely the injurious effects of imports of sugar from Mexico.⁴ As a result of the ITC's determination, the CVD Agreement remained in effect, and on March 27, 2015, Commerce, in accordance with section 704(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and refund all cash deposits.

Notwithstanding issuance of the CVD Agreement, pursuant to requests by domestic interested parties, Commerce continued its investigation and made an affirmative final determination that countervailable subsidies were being provided to exporters and producers of sugar from Mexico.⁵ In its *Final Determination*, Commerce calculated countervailable subsidy rates of 43.93 percent for Fondo de Empresas Expropiadas del Sector Azucarero (FEESA), 5.78 percent for Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group), and 38.11 percent for producers and exporters that were not individually investigated. Commerce stated in its *Final Determination* that it would “not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the {CVD} Suspension Agreement is terminated.”⁶ The ITC subsequently made an affirmative determination of material injury to an industry in the United States by reason of imports of sugar from Mexico.⁷

In June 2016, Commerce and GOM began consultations regarding the CVD

³ See *Sugar From Mexico: Suspension of Countervailing Investigation*, 79 FR 78044 (December 29, 2014) (CVD Agreement).

⁴ See *Sugar from Mexico: Determinations*, 80 FR 16426 (March 27, 2015).

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015); *Sugar From Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015) (*Final Determination*).

⁶ *Final Determination*, 80 FR at 57338.

⁷ See *Sugar From Mexico*, 80 FR 70833 (November 16, 2015) (*Final ITC Determination*).

Agreement to address concerns raised by the domestic industry and to ensure that the CVD Agreement continued to meet all of the statutory requirements for a suspension agreement, e.g., that suspension of the investigation is in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring is practicable. The consultations resulted in Commerce and the GOM initialing a draft amendment to the CVD Agreement on June 14, 2017, and subsequently signing a finalized amendment on June 30, 2017.⁸

CSC Sugar LLC (CSC Sugar) challenged Commerce's determination to amend the CVD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.⁹ Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico), as required by section 777(a)(3) of the Act.¹⁰ The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the 2017 CVD Amendment.¹¹

Ultimately, the CIT found that Commerce's failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as “harmless.”¹² The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.¹³ On that basis, the CIT stated that the 2017 CVD Amendment must be vacated.¹⁴ Consistent with CIT's ruling in *CSC Sugar II*, on December 6, 2019, Commerce terminated the 2017 CVD Amendment prospectively—and accordingly, as of December 7, 2019, the unamended CVD Agreement has been in force and effective, and the 2017 CVD Amendment has had no force or effect.¹⁵

⁸ See *Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (2017 CVD Amendment).

⁹ See *CSC Sugar LLC v. United States*, Ct. No. 17-00214, Slip Op. 19-131 (CIT October 18, 2019) (*CSC Sugar II*) at 4.

¹⁰ *Id.*

¹¹ *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

¹² *Id.* at 11-12.

¹³ *Id.* at 12.

¹⁴ See *Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 84 FR 58136 (October 30, 2019).

¹⁵ See *Sugar From Mexico: Notice of Termination of Amendment to the Agreement Suspending the*

Continued

On November 4, 2019, Commerce formally opened consultations to renegotiate an amendment to the CVD Agreement.¹⁶ On November 6, 2019, Commerce released a proposed amendment to the CVD Agreement and invited parties to provide written comments on the proposed amendment by November 12, 2019.¹⁷ On December 4, 2019, Commerce and the GOM initialed a draft amendment to the CVD Agreement, and Commerce released a corresponding draft statutory memorandum.¹⁸ Interested parties were invited to provide comments on the draft amendment and draft memorandum by December 16, 2019.

Scope of Agreement

See Section I, Product Coverage, of the CVD Agreement.

Analysis of Comments Received

We received comments on the draft amendment and draft statutory memorandum from CSC Sugar; the petitioners, American Sugar Coalition and its members;¹⁹ Imperial Sugar Company; the Government of Mexico; the Sugar Users Association; the International Sugar Trade Coalition, Inc.; and the Corn Refiners Association. In reaching a final amendment to the CVD Agreement, Commerce has taken into account all comments submitted on the record of the suspension agreement proceeding and has made changes, where warranted, to the December 4, 2019 draft CVD amendment based upon those comments.

Amendment to CVD Agreement

Commerce consulted with the GOM and domestic interested parties and has considered the comments submitted by interested parties with respect to the

Countervailing Duty Investigation, 84 FR 67718, 67719 (December 11, 2019).

¹⁶ See Letter to the Government of Mexico from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Consultations on Potential Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico" (November 4, 2019).

¹⁷ See Letter to All Interested Parties from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Release of Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico" (November 6, 2019).

¹⁸ See Letter to All Interested Parties from Sally C. Gannon, Director for Bilateral Agreements, "Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and Draft Statutory Memorandum" (December 4, 2019).

¹⁹ Petitioners are the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association.

draft amendment to the CVD Agreement. On January 15, 2020, after consideration of the interested party comments received, Commerce and the GOM signed a finalized amendment to the CVD Agreement. The 2020 Amendment, as integrated with the CVD Agreement (the amended CVD Agreement), allows for exports of Mexican sugar to the United States in accordance with the collective terms therein.

In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances, as defined by section 704(c)(4) of the Act, exist with respect to the amended CVD Agreement. We have also determined that the amended CVD Agreement is in the public interest and can be monitored effectively, as required under section 704(d) of the Act.

For the reasons outlined above, we find that the amended CVD Agreement meets the criteria of section 704(c) and (d) of the Act.

The terms and conditions of the amended CVD Agreement, signed on January 15, 2020, are set forth in the 2020 Amendment to the CVD Agreement, which is attached in Annex 1 to this notice.

Administrative Protective Order Access

The administrative protective order (APO) Commerce granted in the suspension agreement segment of this proceeding remains in place and effective for the amended CVD Agreement. All new parties requesting access under the APO currently in effect to business proprietary information submitted during the administration of the amended CVD Agreement must submit an APO application in accordance with Commerce's regulations currently in effect.²⁰

We are issuing and publishing this notice in accordance with section 704(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: January 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Annex 1: Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar From Mexico

The Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Agreement) signed by the United States Department of Commerce (Commerce) and the Government of Mexico (GOM) on December 19, 2014, is amended, as set forth below (Amendment).

²⁰ See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306.

If a provision of the Agreement conflicts with a provision of this Amendment, the provision of the Amendment shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force.

Commerce and the GOM hereby agree as follows:

Section II ("Definitions") is amended as follows:

Section II.D is replaced with:

"Effective Date of the Agreement" means the date on which Commerce and the GOM signed the Agreement. Additionally, the "Effective Date of the Amendment" means the date on which Commerce and the GOM sign the Amendment.

Section II.G.1 is replaced with:

1. "Initial Export Limit Period" covers entries of Sugar entered, or withdrawn from warehouse for consumption, between October 1, 2019 and September 30, 2020.

Section II.K is replaced with:

"Other Sugar" means

- a. Sugar at a polarity of less than 99.2, as produced and measured on a dry basis;
- b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.U, Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; and,
- c. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is below 99.5, as produced and measured on a dry basis.

Such Other Sugar must be exported to the United States loaded in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) into the hold(s) of an ocean-going vessel. To be considered as Other Sugar, if Sugar leaves the Mexican mill in a container, tote, bag or other package (*i.e.*, is not freely flowing), it must be emptied from the container, tote, bag or other package into the hold of the ocean-going vessel for exportation. All other exports of Sugar from Mexico that are not transported in bulk and freely flowing in the hold(s) of an ocean-going vessel will be considered to be Refined Sugar for purposes of the Export Limit or Additional U.S. Needs Sugar, regardless of the polarity of that Sugar.

Section II.L is replaced with:

"Refined Sugar" means

- a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;
- b. Sugar considered to be Refined Sugar under Section II.K;
- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.U, Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
- d. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is 99.5 or above, as produced and measured on a dry basis.

New Section II.U is added as follows:

"Additional U.S. Needs Sugar" means the quantity of Sugar allowed to be exported, over and above the Export Limit calculated under Section V.B.3, to fill a need identified by USDA in the U.S. market for a particular type and quantity of Sugar, and offered to Mexico pursuant to Section V.B.4.c.

Section V ("Export Limits") is amended as follows:

Section V.A is replaced with the following:

A. The Export Limit for the Initial Export Limit Period shall be 1,461,420 short tons raw value. Effective January 1, 2020, no more than 1,004,726 short tons raw value of sugar from Mexico, may be exported to the United States during the period October 1, 2019, through March 31, 2020. The restriction in Section V.C.3, as set forth below, shall apply to only an amount of 1,361,420 short tons raw value. The Export Limit for the Initial Export Limit Period shall be re-calculated in March 2020 in accordance with Section V.B.3. The restriction in V.C.3 below shall apply to only the Export Limit calculated in March 2020 less 100,000 short tons raw value.

Section V.B—the first sentence of the first paragraph is amended as follows (changes in italics):

The Export Limit for each Subsequent Export Limit Period will be *fifty (50)* percent of the Target Quantity of U.S. Needs as calculated based on the July WASDE preceding the beginning of the Export Limit Period.

Section V.B.4 is replaced with the following:

4. Increases to the Export Limit
a. Prior to April 1 of any Export Limit Period, if USDA notifies Commerce, in writing, of any additional need for Sugar, Commerce shall, consistent with 704(c) of the Act, increase the Export Limit to address potential shortages in the U.S. market based on USDA's request.

b. Starting in March, within 10 days following the publication of each WASDE report during a given Export Limit Period, Commerce agrees that it shall consult with USDA and the GOM regarding any potential increase in the Export Limit on or after April 1. Following each consultation with the GOM, the GOM will notify Commerce within 10 days of (1) the extent to which the GOM has issued export licenses for Other Sugar and Refined Sugar to fulfill 100 percent of the Target Quantity of U.S. Needs; (2) the quantity of Other Sugar and Refined Sugar that has been exported under such licenses, and (3) the nature and quantity of the Sugar that Mexico can supply, with supporting documentation for the foregoing, and Commerce shall notify USDA.

c. Pursuant to such consultations, and upon receiving notice from USDA in writing of a need in the U.S. market for a particular type and quantity of additional Sugar that Mexico has indicated it can supply, Commerce shall: (1) Request written confirmation from the GOM that Mexico can and will supply 100 percent of the Target Quantity of U.S. Needs (as calculated pursuant to Section V.B.3 based on the March WASDE); and (2) upon receiving such confirmation, increase the Export Limit, consistent with 704(c) of the Act, by an amount equal to 100 percent of such particular type and quantity of sugar identified by USDA (hereinafter "Additional U.S. Needs Sugar"). When such Additional U.S. Needs Sugar is requested by USDA, and in turn offered to Mexico by Commerce, the definitions for Other Sugar and Refined Sugar in Section II.K.a and Section II.L.a, respectively, shall apply prior to May 1 of

any Export Limit Period, and, on or after such date, the definition in Section II.K.b and Section II.L.c, respectively, shall apply. Such Additional U.S. Needs Sugar shall comply with the applicable definitions and requirements in the Agreement, for Other Sugar and Refined Sugar, respectively.

d. In the event of an extraordinary and unforeseen circumstance that seriously threatens the economic viability of the U.S. sugar refining industry, USDA may specify the polarity of the amount of additional Sugar specifically needed to rectify such extraordinary and unforeseen circumstance. To the extent possible under the circumstances, USDA will consult with the GOM and other interested parties. When such additional Sugar is requested by USDA under this Section V.B.4.d, and in turn offered to Mexico by Commerce, the definitions for Other Sugar and Refined Sugar in Section II.K.c and Section II.L.d, respectively, shall apply.

e. If Commerce has imposed penalties for polarity non-compliance under Section VIII.B.4 in a given Export Limit Period, Mexico may not be eligible for Additional Needs U.S. Sugar.

f. Any additional Sugar may be limited to Other Sugar or Refined Sugar, or any combination thereof, as specified by USDA. For greater certainty, Section V.C does not apply to any additional Sugar exported by Mexico pursuant to this Section V.B.4.

Section V.C is amended as follows:

Section V.C.2 is amended as follows (changes in italics):

No more than 55 percent of U.S. Needs calculated in each *September* and effective January 1 may be exported to the United States during the period October 1 through March 31, *unless that amount is less than or equal to the amount calculated under Section V.C.1, in which case the amount calculated under Section V.C.1 will continue to apply until March 31.*

Section V.C.3 is amended as follows (changes in italics):

Refined Sugar may account for no more than 30 percent of the exports during any given Export Limit Period.

Section VI ("Implementation") is amended as follows:

Section VI.A—the following sentences are added at the end of the paragraph:

On the Effective Date of the Amendment, presentation of an Export License is required as a condition for entry of Sugar from Mexico into the United States. The GOM will issue amended regulations to implement the Amendment, as necessary.

Section VI.B—the first sentence is amended as follows (changes in italics) and a new sentence is inserted after the first sentence (in italics):

Export Licenses will be *contract-specific* and must contain the information identified in Appendix I. *Export Licenses issued by the GOM must, in addition to specifying whether or not exported Other Sugar is for further-processing, also specify the identity of the entity that is further processing the Other Sugar, if known.*

Section VIII.B ("Compliance Monitoring") is amended as follows:

Section VIII.B.4 is added as follows:

4. Penalties for Polarity Non-Compliance of this Agreement and/or Price Non-Compliance of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement): Commerce will review documentation regarding polarity testing that is placed on the record of this Agreement, in accordance with Section VII.C.6 of the AD Agreement, to determine whether there have been imports that are inconsistent with the provisions of this Agreement and Sections II.F, II.H, VII.C.6 and Appendix I of the AD Agreement. Where Commerce finds that polarity test results of an entry of Sugar are not compliant with the Agreement's or AD Agreement's applicable definition of Other Sugar or Sugar was sold at prices that are less than the Reference Prices established in Appendix I of the AD Agreement: (1) Commerce shall deduct two (2) times the quantity of that entry from Mexico's Export Limit, and (2) the GOM will, in turn, deduct that same quantity from the specific producer's/exporter's Export Limit allocation.

a. The penalty will be applied on the date Commerce notifies the GOM in writing of such non-compliance.

b. If Other Sugar that enters during the period from October 1 through the day before the publication of the July WASDE tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then Commerce will reduce Mexico's current Export Limit by two (2) times the quantity of that entry. The Export Limit determined under Section V.B.2 and V.B.3 will be correspondingly reduced by the same amount. At the time of the March WASDE when the Target Quantity of U.S. Needs is determined, and up to the day before the publication of the July WASDE, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's *current-year* Export Limit was reduced.

c. If Other Sugar that enters during the period from the day of the publication of the July WASDE through September 30 tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then Commerce will reduce the Export Limit for the next Export Limit Period by two (2) times the quantity of that entry. That reduction will be applied to each revision of the Export Limit under Section V.B.1, V.B.2 and V.B.3. If Mexico's *next fiscal year* Export Limit is reduced, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's Export Limit was reduced.

d. If Commerce finds that issues with meeting the polarity, testing, or compliance requirements of this Agreement continue to arise, Commerce can at any time terminate the Agreement under Section XI.B. Apart from termination, Commerce may take additional steps to ensure compliance with the terms of this Agreement and the AD Agreement as appropriate, including reducing the Export Limit up to three (3) times the quantity of entries that do not

comply with this Agreement or the AD Agreement.

Appendix I is amended as follows (changes in italics):

The GOM will issue *contract-specific* Export Licenses to Mexican entities that shall contain the following fields:

At Appendix I, the following will be added to the Export License:

12. Contract Identification Information: Indicate the contract identification information with which the license is associated.

At Appendix II, the following will be added to the information reported to Commerce:

12. Contract Identification Information: Indicate the contract identification information with which the license is associated.

13. Date of Export: Indicate the date of export of the Sugar from Mexico to the United States.

It is acknowledged that reported information may need to be updated from time to time to reflect corrected information from customs authorities.

For the U.S. Department of Commerce:

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce.

Date

For the Government of Mexico:

Luz María de la Mora Sánchez,
Subsecretaria de Comercio Exterior,
Secretaría de Economía.

Date

[FR Doc. 2020-00972 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-501]

Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that the single entity comprised of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively, Borusan) made sales of circular welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey at less than normal value (NV) during the

period of review (POR), May 1, 2017 through April 30, 2018. Commerce also determines that the single entity comprised of Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik) did not make sales of welded pipe and tube from Turkey at less than NV during the POR.

DATES: Applicable January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Karine Gziryan, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4162 or (202) 482-4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on July 18, 2019.¹ This review covers 16 producers or exporters of subject merchandise, including the two mandatory respondents, the single entity of Borusan,² and the single entity of Toscelik.³ We invited interested parties to comment on the *Preliminary Results*. On September 13, 2019 and September 24, 2019, we received case

¹ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018*, 84 FR 34345 (July 18, 2019) and accompanying Memorandum, “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2017–2018” dated July 18, 2019 (*Preliminary Results*).

² In prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as a single entity. See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 80 FR 76674, 76674 (December 10, 2015). We determine that there is no evidence on the record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity.

³ In prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single company. See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 80 FR 76674, 76674 n.2 (December 10, 2015). Accordingly, we determined that there is no evidence on the record for altering our treatment of Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single company. See also Memorandum, “Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Respondent Selection,” dated August 8, 2018 (Respondent Selection Memorandum).

briefs from interested parties,⁴ and on September 27th and 30th, respectively, we received rebuttal briefs from interested parties.⁵ On August 14, 2019, Borusan requested that Commerce conduct a hearing in this proceeding.⁶ We held a hearing on October 23, 2019. On November 1, 2019, Commerce extended the deadline for the final results by 60 days to January 14, 2020.⁷

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this order are welded carbon steel standard pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, and are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. These products, commonly referred to in the industry as standard pipe or tube, are produced to various

⁴ See Borusan’s Letter, “Administrative Review of the Antidumping Order on Circular Welded Pipe and Tubes from Turkey: Redacted Case Brief,” dated September 24, 2019 (Borusan’s Case Brief); see also Petitioner’s Letter, “Circular Welded Pipe and Tubes from Turkey: Case Brief,” dated September 24, 2019 (Petitioner’s Case Brief); and Letter on behalf of Independence Tube Corporation (Independence Tube) and Southland Tube, Incorporated (Southland Tube), Nucor companies (collectively, Nucor Company), “Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Case Brief,” dated September 13, 2019. The Nucor Company submitted its brief in support of Wheatland’s case brief, concurring and adopting by reference the arguments set forth in Wheatland’s brief. The petitioner is Wheatland Tube Company (petitioner).

⁵ See Petitioner’s Letter, “Circular Welded Pipe and Tubes from Turkey: Rebuttal Brief” dated September 30, 2019 (Petitioner’s Rebuttal Brief); see also Borusan’s Letter, “Circular Welded Pipe and Tubes from Turkey Case No. A-489-501: BMB’s Rebuttal Brief,” dated September 30, 2019 (Borusan’s Rebuttal Brief); and the Nucor Company’s Letter “Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Rebuttal Brief,” dated September 27, 2019. The Nucor Company submitted its rebuttal brief in support of Wheatland’s rebuttal brief, concurring and adopting by reference the arguments set forth in Wheatland’s rebuttal brief.

⁶ See Borusan’s Letter, “Circular Welded Pipe and Tubes from Turkey Case No. A-489-501: Request for Hearing,” dated July 18, 2019;

⁷ See Memorandum, “Circular Welded Carbon Steel Standard Pipe and Tubes from Turkey: Extension of Deadline for Final Results of 2017–2018 Antidumping Duty Administrative Review,” dated November 1, 2019.

ASTM specifications, most notably A-120, A-53 or A-135.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum (IDM),⁸ which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an Appendix. The IDM is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and ACCESS is available to all parties in the Central Records Unit (CRU) for Enforcement and Compliance, Room B8024 of the main Commerce building. In addition, a complete version of the IDM can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed IDM and the electronic version of the IDM are identical in content.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce preliminarily determined that eleven companies had no shipments during the POR.⁹ Following publication of the *Preliminary Results*, we received no comments from interested parties regarding these claims. As a result, and because the record contains no evidence to the contrary, we continue to find that

these eleven companies made no shipments during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made the following revisions to the preliminary margin calculations for Borusan and Toscelik.¹⁰ As a result of the regression analysis followed in these final results which serves as the basis for an adjustment for a particular market situation, we recalculated the rate used to adjust the cost of hot-rolled coil, given Commerce’s finding that a particular market situation exists in Turkey.¹¹

- For Borusan, we applied the revised PMS adjustment rate to the cost of purchased HRC as reported in the DIRMAT1 field in Borusan’s cost of production data. *See* Comment 8.
- For Toscelik, we applied the revised PMS adjustment rate to the portion of the steel cost reported in the STEEL field in Toscelik’s cost of production data that represents the cost of purchased HRC. *See* Comment 9.

Final Results for Non-Examined Companies

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual

examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for determining the weighted-average dumping margin for all other producers or exporters in a less-than-fair market investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

In this review, we have a calculated weighted-average dumping margin for Borusan that is not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, Commerce assigns to the companies not individually examined the 9.99 percent weighted-average dumping margin calculated for Borusan.

Final Results of the Administrative Review

We have determined the following weighted-average dumping margins for the firms listed below for the period May 1, 2017 through April 30, 2018:

| Producer or exporter | Weighted-average dumping margin (percent) |
|--|---|
| Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S | 9.99 |
| Toscelik Profil ve Sac Endustrisi A.S./Tosyali Dis Ticaret A.S./Toscelik Metal Ticaret A.S | 0.00 |
| Kale Baglanti Teknolojileri San. ve Tic | 9.99 |
| Noksel Selik Boru Sanayi A.S | 9.99 |
| Cinar Boru Profil San. ve Tic. As | 9.99 |

Assessment Rates

Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.¹²

For Borusan, because its weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific *ad valorem* antidumping duty

assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing this amount by the total entered value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate

⁸ *See* Memorandum, “Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube from Turkey,” dated concurrently with, and hereby adopted by, this notice.

⁹ *See Preliminary Results*, 84 FR at 34346. *See also* certification of no shipments filed by: Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); (2) Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova); (3) Yucel Boru ve Profil Endustrisi A.S. (Yucel); (4)

Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucelboru); (5) Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); (6) Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); (7) Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); (8) Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); (9) Borusan Holding (BMBYH); (10) Borusan Mannesmann Yatirim Holding (BMYH); and (11) Tubeco Pipe and Steel Corporation (Tubeco). We note that, while Borusan Istikbal also submitted a no-shipment certification on August 13, 2018, we continue to find Borusan Istikbal to be part of the

single entity, Borusan, and we find no record evidence that warrants altering this treatment.

¹⁰ *See* Commerce’s Analysis Memorandum, “Analysis for the Final Results: Borusan Mannesmann Boru Sanayi ve Ticarete A.S. and Borusan Istikbal Ticaret T.A.S.,” and Analysis Memorandum, “Analysis for the Final Results: Toscelik,” both of which are dated concurrently with this **Federal Register** notice.

¹¹ *Id.*; *see also* Comments 1 and 2 in the IDM.

¹² *See* 19 CFR 351.212(b).

entries covered by this review where an importer-specific antidumping duty assessment rate is not zero or *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis*.

For Toscelik, we will instruct CBP to liquidate its entries during the POR imported by the importers identified in its questionnaire responses without regard to antidumping duties, because its weighted-average dumping margin in these final results is zero.¹³

For the three companies that had shipments during the POR and that were not selected for individual examination, we will instruct CBP to liquidate the appropriate entries and assess antidumping duties at an *ad valorem* rate equal to the weighted-average dumping margin specified in the “Final Rates of the Administrative Review” section, above.

Consistent with Commerce’s assessment practice, for entries of subject merchandise during the POR produced by any company upon which we initiated an administrative review and for which we have found that that company had “no shipments” during the POR, or for which they did not know that the merchandise was destined for the United States, 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.¹⁴

We intend to issue 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 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 of the companies listed in the “Final Results of the Administrative Review” section above will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously reviewed or investigated

companies not included in the final results of this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 14.74 percent, the all-others rate established in the LTFV investigation.¹⁵ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and 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 14, 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. Changes Since the Preliminary Results
- V. Discussion of the Issues
 - General Issues
 - Comment 1: Allegation of a Particular Market Situation (PMS) in Turkey
 - Comment 2: Adjusting for PMS Based on Proposed Regression Analysis
 - Borusan-Specific Issues
 - Comment 3: Whether Section 232 Duties Should be Deducted from U.S. Price
 - Comment 4: Borusan Constructed Export Price (CEP) Sales
 - Comment 5: Whether Borusan Reported Theoretical Weight Correctly
 - Comment 6: Whether Borusan’s Overrun Sales are Outside the Ordinary Course of Trade
 - Comment 7: Reallocation of Material Costs
 - Comment 8: Adjustment for Hot-rolled Coil (HRC) Cost to Account for the Effects of a PMS
 - Toscelik-Specific Issues
 - Comment 9: Application of the PMS Adjustment to Toscelik’s Costs
- VI. Recommendation

[FR Doc. 2020–00964 Filed 1–21–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review, 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Shin Yang Steel Co., Ltd. (Shin Yang), a producer/exporter of merchandise subject to this administrative review, made sales of subject merchandise at less than normal value during the period of review (POR) May 1, 2017 through April 30, 2018. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled, “Final Results of the Review.”

DATES: Applicable January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Hannah Falvey or Nicolas Mayora, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of

¹³ See *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8103 (February 14, 2012).

¹⁴ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁵ See *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 51 FR 17784 (May 15, 1986).

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4889 or (202) 482-3053, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2019, Commerce published the *Preliminary Results* of the administrative review of certain circular welded carbon steel pipes and tubes from Taiwan.¹ We invited interested parties to comment on the *Preliminary Results*. A summary of events that occurred since Commerce published the *Preliminary Results* can be found in the Issues and Decision Memorandum.² 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 circular welded carbon steel pipes and tubes from Taiwan. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description of the scope of order remains dispositive. For a full description of the scope, see the Issues and Decision Memorandum.³

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as an Appendix. 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 <https://access.trade.gov> and in the Central Records Unit (CRU), Room B8024 of the main Commerce building.

¹ See *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34337 (July 18, 2019) (*Preliminary Results*).

² See Memorandum, "Issues and Decision Memorandum for Final Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan," dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

³ For a full description of the scope, see the Issues and Decision Memorandum.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce preliminarily determined that Sheng Yu Steel Co., Ltd. (Sheng Yu), Tension Steel Industries Co., Ltd. (Tension Steel), Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), and Pat & Jeff Enterprise Co., Ltd. (P&J) had no shipments during the POR.⁴ Following publication of the *Preliminary Results*, we received no comments from interested parties regarding this decision. As a result, and because the record contains no evidence to the contrary, we continue to find that Sheng Yu, Tension Steel, Yieh Hsing, and P&J made no shipments during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Sheng Yu, Tension Steel, Yieh Hsing, and P&J but exported by other parties without their own rate, at the all-others rate.⁵

Final Results of the Review

We determine that the following weighted-average dumping margins exist for Shin Yang and the 15 companies not selected for individual review, for the period May 1, 2017 through April 30, 2018:

| Producer/exporter | Dumping margin (percent) |
|---|--------------------------|
| Shin Yang Steel Co., Ltd | 2.73 |
| Chung Hung Steel Corp | 2.73 |
| Far East Machinery Co., Ltd | 2.73 |
| Far East Machinery Group | 2.73 |
| Fine Blanking & Tool Co., Ltd | 2.73 |
| Hou Lih Co., Ltd | 2.73 |
| Kao Hsing Chang Iron & Steel Corp | 2.73 |
| Lang Hwang Corp | 2.73 |
| Locksure Inc | 2.73 |
| New Chance Products Co., Ltd .. | 2.73 |
| Pin Tai Metal Inc | 2.73 |
| Shang Jouch Industrial Co., Ltd .. | 2.73 |
| Shuan Hwa Industrial Co., Ltd ... | 2.73 |
| Titan Fastech Ltd | 2.73 |
| Yeong Shien Industrial Co., Ltd .. | 2.73 |

⁴ See *Preliminary Results*, 84 FR at 34338, and accompanying Preliminary Decision Memorandum, at 2-3.

⁵ See, e.g., *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

| Producer/exporter | Dumping margin (percent) |
|---|--------------------------|
| Yousing Precision Industry Co., Ltd | 2.73 |

Assessment

Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).

For Shin Yang, because its weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total sales quantity associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis*.

For the companies which were not selected for individual review, we will assign an assessment rate equal to Shin Yang's dumping margin identified above.⁶ 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.⁷

As noted in the "Final Determination of No Shipments" section, above, Commerce will instruct CBP to liquidate any existing entries of merchandise produced by Sheng Yu, Tension Steel, Yieh Hsing, or P&J, but exported by other parties, at the rate for the intermediate reseller, if applicable, or at the all-others rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon

⁶ The Act does not specify how to calculate a dumping margin for a respondent that is not selected for individual review in an administrative review. Therefore, we look to section 735(c)(5)(A) of the Act, which explains how to calculate the "all others" rate in an investigation, for guidance. Consistent with how we would calculate the "all others" rate in an investigation, we are basing the dumping margin for non-selected companies on the weighted-average dumping margin calculated for the selected respondent, Shin Yang.

⁷ See section 751(a)(2)(C) of the Act.

publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for 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 rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review, including the companies Commerce has determined had no shipments in these final results, but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 9.70 percent, the all-others rate established in the LTFV investigation.⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of double antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only 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 the return or 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: January 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-00951 Filed 1-21-20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-845]

Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 15, 2020.

SUMMARY: The Department of Commerce (Commerce) and a representative of the signatory sugar producers/exporters accounting for substantially all imports of sugar from Mexico have signed an amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement). The amendment to the AD Agreement modifies the definitions for sugar from Mexico, revises the reference prices for the applicable sugar from Mexico, and provides for enhanced monitoring and enforcement mechanisms.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell at (202) 482-0162 or (202) 482-0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2014, Commerce initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act), to determine whether imports of sugar from Mexico are being, or are likely to be, sold in the United States at less than

fair value (LTFV).¹ On October 24, 2014, Commerce preliminarily determined that sugar from Mexico is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act, and postponed the final determination in this investigation until no later than 135 days after the date of publication of the preliminary determination in the **Federal Register**.²

Commerce and a representative of the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed the AD Agreement on December 19, 2014.³

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified Commerce that they had petitioned the International Trade Commission (ITC) to conduct a review of the AD Agreement under section 734(h) of the Act, to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the AD Agreement. On March 24, 2015, in a unanimous vote, the ITC found that the AD Agreement eliminated completely the injurious effects of imports of sugar from Mexico.⁴ As a result of the ITC's determination, the AD Agreement remained in effect, and on March 27, 2015, Commerce, in accordance with section 734(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and refund all cash deposits.

Notwithstanding issuance of the AD Agreement, pursuant to requests by domestic interested parties, Commerce continued its investigation and made an affirmative final determination of sales at LTFV.⁵ In its *Final Determination*, Commerce calculated weighted-average dumping margins of 40.48 percent for Fondo de Empresas Expropiadas del Sector Azucarero (FEESA), 42.14 percent for Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group), and

¹ See *Sugar from Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795 (April 24, 2014).

² See *Sugar from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 65189 (November 3, 2014).

³ See *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014) (AD Agreement).

⁴ See *Sugar from Mexico; Determinations*, 80 FR 16426 (March 27, 2015).

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015); *Sugar From Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015) (*Final Determination*).

⁸ See *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order*, 49 FR 19369 (May 7, 1984).

40.74 percent for all other Mexican producers/exporters. Commerce stated in its *Final Determination* that it would “not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the AD Suspension Agreement is terminated and the Department issues an antidumping duty order,” and, in that case, it would “instruct CBP to suspend liquidation and require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price,” and adjusted for export subsidies.⁶ The ITC subsequently made an affirmative determination of material injury to an industry in the United States by reason of imports of sugar from Mexico.⁷

In June 2016, Commerce and representatives of the Mexican sugar producers/exporters began consultations regarding the AD Agreement to address concerns raised by the domestic industry and to ensure that the AD Agreement continued to meet all of the statutory requirements for a suspension agreement, e.g., that suspension of the investigation is in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring is practicable. The consultations resulted in Commerce and a representative of the signatory producers/exporters accounting for substantially all imports of sugar from Mexico initialing a draft amendment to the AD Agreement on June 14, 2017, and subsequently signing a finalized amendment on June 30, 2017.⁸

CSC Sugar LLC (CSC Sugar) challenged Commerce’s determination to amend the AD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.⁹ Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico), as required by section 777(a)(3) of the Act.¹⁰ The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte*

communications regarding the 2017 AD Amendment.¹¹

Ultimately, the CIT found that Commerce’s failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as “harmless.”¹² The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.¹³ On that basis, the CIT stated that the 2017 AD Amendment must be vacated.¹⁴ Consistent with CIT’s ruling in *CSC Sugar II*, on December 6, 2019, Commerce terminated the 2017 AD Amendment prospectively—and accordingly, as of December 7, 2019, the unamended AD Agreement has been in force and effective, and the 2017 AD Amendment has had no force or effect.¹⁵

On November 4, 2019, Commerce formally opened consultations to renegotiate an amendment to the AD Agreement.¹⁶ On November 6, 2019, Commerce released a proposed amendment to the AD Agreement and invited parties to provide written comments on the proposed amendment by November 12, 2019.¹⁷ On December 4, 2019, Commerce and a representative of the signatory producers/exporters initialed a draft amendment to the AD Agreement, and Commerce released corresponding draft statutory memoranda.¹⁸ Interested parties were invited to provide comments on the draft amendment and draft memoranda by December 16, 2019.

Scope of Agreement

See Section I, Product Coverage, of the AD Agreement.

¹¹ *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

¹² *Id.* at 11–12.

¹³ *Id.* at 12.

¹⁴ See *Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 84 FR 58129 (October 30, 2019).

¹⁵ See *Sugar From Mexico: Notice of Termination of Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 84 FR 67711, 67712 (December 11, 2019).

¹⁶ See Letter to Cámara Nacional de Las Industrias Azucarera y Alcohólera from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, “Consultations on Potential Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico” (November 4, 2019).

¹⁷ See Letter to All Interested Parties from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, “Release of Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico” (November 6, 2019).

¹⁸ See Letter to All Interested Parties from Sally C. Gannon, Director for Bilateral Agreements, “Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and Draft Statutory Memoranda” (December 4, 2019).

Analysis of Comments Received

We received comments on the draft amendment and draft statutory memoranda from CSC Sugar; the petitioners, American Sugar Coalition and its members;¹⁹ Imperial Sugar Company; Cámara Nacional de Las Industrias Azucarera y Alcohólera (Cámara); the Sugar Users Association (SUA); the International Sugar Trade Coalition, Inc.; and the Corn Refiners Association. In reaching a final amendment to the AD Agreement, Commerce has taken into account all comments submitted on the record of the suspension agreement proceeding and has made changes, where warranted, to the December 4, 2019 draft AD amendment based upon those comments.

Amendment to AD Agreement

Commerce consulted with the Mexican sugar producers/exporters and domestic interested parties and has considered the comments submitted by interested parties with respect to the draft amendment to the AD Agreement. On January 15, 2020, after consideration of the interested party comments received, Commerce and a representative of sugar producers/exporters accounting for substantially all imports of sugar from Mexico, signed a finalized amendment to the AD Agreement. The 2020 Amendment, as integrated with the AD Agreement (the amended AD Agreement), allows for exports of Mexican sugar to the United States in accordance with the collective terms therein.

In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances, as defined by section 734(c)(2)(A) of the Act, exist with respect to the amended AD Agreement. We have also determined that the amended AD Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic sugar by imports of that merchandise from Mexico, as required by section 734(c)(1) of the Act. We have also determined that the amended AD Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act.

For the reasons outlined above, we find that the amended AD Agreement

¹⁹ The petitioners are the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association.

⁶ *Final Determination*, 80 FR at 57342.

⁷ See *Sugar From Mexico*, 80 FR 70833 (November 16, 2015) (*Final ITC Determination*).

⁸ See *Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945 (July 11, 2017) (2017 AD Amendment).

⁹ See *CSC Sugar LLC v. United States*, Ct. No. 17–00215, Slip Op. 19–132 (CIT October 18, 2019) (*CSC Sugar II*) at 4.

¹⁰ *Id.*

meets the criteria of section 734(c) and (d) of the Act.

The terms and conditions of the amended AD Agreement, signed on January 15, 2020, are set forth in the 2020 Amendment to the AD Agreement, which is attached in Annex 1 to this notice.

Administrative Protective Order Access

The administrative protective order (APO) Commerce granted in the suspension agreement segment of this proceeding remains in place and effective for the amended AD Agreement. All new parties requesting access to business proprietary information submitted during the administration of the amended AD Agreement, under the APO currently in effect, must submit an APO application in accordance with the Commerce's regulations currently in effect.²⁰

We are issuing and publishing this notice in accordance with section 734(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: January 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Annex 1: Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar From Mexico

The Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (Agreement) signed by the signatory producers and exporters of Sugar from Mexico (individually, Signatory; collectively, Signatories) and the United States Department of Commerce (Commerce) on December 19, 2014, is amended, as set forth below (Amendment).

If a provision of the Agreement conflicts with a provision of this Amendment, the provision of the Amendment shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force.

Commerce and the Signatories hereby agree as follows:

Section II ("Definitions") is amended as follows:

Section II.C is replaced with:

"Effective Date of the Agreement" means the date on which Commerce and the Signatories signed the Agreement. Additionally, the "Effective Date of the Amendment" means the date on which Commerce and the Signatories sign the Amendment.

Section II.F is replaced with:

"Other Sugar" means

a. Sugar at a polarity of less than 99.2, as produced and measured on a dry basis;

b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.O,

Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; and,
c. In the event that Section V.B.4.d of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement) is exercised, Sugar at a polarity specified by USDA that is below 99.5, as produced and measured on a dry basis.

Such Other Sugar must be exported to the United States loaded in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) into the hold(s) of an ocean-going vessel. To be considered as Other Sugar, if Sugar leaves the Mexican mill in a container, tote, bag or other package (*i.e.*, is not freely flowing), it must be emptied from the container, tote, bag or other package into the hold of the ocean-going vessel for exportation. All other exports of Sugar from Mexico that are not transported in bulk and freely flowing in the hold(s) of an ocean-going vessel will be considered to be Refined Sugar for purposes of the Reference Prices, regardless of the polarity of that Sugar.

Section II.H is replaced with:

"Refined Sugar" means

a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;

b. Sugar considered to be Refined Sugar under Section II.F;

c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.O,

Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
d. In the event that Section V.B.4.d of the CVD Agreement is exercised, Sugar at a polarity specified by USDA that is 99.5 or above, as produced and measured on a dry basis.

New Section II.N is added as follows:

"Intermediary Customer" means trader, processor, or other reseller located outside of the United States who sells Sugar to an unaffiliated customer in the United States.

New Section II.O is added as follows:

"Additional U.S. Needs Sugar" means the quantity of Sugar allowed to be exported, over and above the Export Limit calculated under Section V.B.3 of the CVD Agreement, to fill a need identified by USDA in the U.S. market for a particular type and quantity of Sugar, and offered to Mexico pursuant to Section V.B.4.c of the amended CVD Agreement.

Section VII ("Monitoring of the Agreement") is amended as follows:

Section VII.B ("Compliance Monitoring") is amended as follows:

Section VII.B.4—an additional sentence as follows is added to the end of paragraph 4:

Commerce may verify polarity testing practices at any Mexican mill and request supporting documentation for polarity test results.

Section VII.C ("Shipping and Other Arrangements") is amended as follows:

Section VII.C.4 is replaced with the following, with the sentence in italics being added to the language:

4. Not later than 30 days after the end of each quarter, each Signatory will submit a written statement to Commerce certifying that all sales during the most recently completed quarter were at net prices, after rebates, discounts, or other adjustments, at or

above the Reference Prices in effect and were not part of or related to any act or practice which would have the effect of hiding the real price of the Sugar being sold. Further, each Signatory will certify in this same statement that all sales made during the relevant quarter were not part of or related to any bundling arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement. *As part of the certification, each Signatory will submit a listing of the total quantity of Other Sugar and Refined Sugar that was exported during each quarter.*

Each Signatory that did not export Sugar to the United States during any given quarter will submit a written statement to Commerce certifying that it made no sales to the United States during the most recently completed quarter. Each Signatory agrees to permit full verification of its certification as Commerce deems necessary. Failure to provide a quarterly certification may be considered a Violation of the Agreement.

Section VII.C.5 is added as follows:

5. For each sale made by a Signatory to an Intermediary Customer, the Signatory shall incorporate into its sales contract with the Intermediary Customer the obligation that such customers will abide by the terms of the Agreement, including selling the Sugar from Mexico to the first downstream unaffiliated U.S. customer in accordance with the terms of the Agreement. Further, for each sale made by a Signatory to an Intermediary Customer, the Signatory shall incorporate into its sales contract with the Intermediary Customer a provision requiring the Intermediary Customer to provide Commerce with all sales and other related information Commerce requests.

Further, Signatories and Intermediary Customers must retain evidence in their files to document that these contractual obligations were implemented. Commerce retains its authority to request the Signatory and/or Intermediary Customer to provide such documentation, and Commerce may verify such documentation. Where a Signatory does not have access to the documentation but has obligated the Intermediary Customer to provide it to Commerce, Commerce will request the Intermediary Customer to provide the documentation. Failure by a Signatory and/or Intermediary Customer to provide requested documentation may be considered a Violation under Section VIII of the Agreement.

Section VII.C.6 is added as follows:

6. Other Sugar may enter the Customs territory of the United States if the following conditions are met:

Exporters of Other Sugar are required to ensure, through inclusion of obligations in their sales contracts or otherwise, that importers of record of such Other Sugar agree to ensure that Other Sugar is tested for polarity by a laboratory approved by U.S. Customs and Border Protection (CBP) upon entry into the United States, with samples drawn in accordance with CBP standards, and that the importers of record agree to report the polarity test results for each entry to Commerce within 30 days of entry. Such

²⁰ See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306.

polarity test reports must be filed on the official records of Commerce for both this Agreement and the CVD Agreement. For clarity, sampling will be done in accordance with CBP standards (e.g., CBP Directive No. 3820-001B), or its successor directive as agreed by Commerce and the Signatories, including the CBP requirement that the polarity level of an entry will be the average of the samples from that entry.

Commerce will request that CBP inform the importing public of the requirements for importation of Other Sugar set forth in this sub-section.

Section VII.C.7 is added as follows:

7. Penalties for Non-Compliance with Section VII.C.6:

a. Where Commerce finds that exporters and importers of record of Other Sugar are not complying with Section VII.C.6, Commerce may consider this a Violation under Section VIII.D of the Agreement.

b. If Commerce finds that issues with meeting the polarity requirements of the Agreement as required by Sections II.F, II.H, VII.C.6 and Appendix I continue to arise, Commerce can at any time terminate the Agreement under Section X.B. Apart from termination, Commerce may take additional steps to ensure compliance with the terms of this Agreement, including action under Section VIII.B.4 of the CVD Agreement.

Section VIII ("Violations of the Agreement") is amended as follows:

Section VIII.D is amended by adding new paragraphs 3 and 4, and moving paragraph 3 to paragraph 5:

D.3 Failure by Signatories and Intermediary Customers to provide the required documentation specified in Section VII.C.5.

D.4 Failure by Signatories and importers of record to comply with the requirements under Section VII.C.6.

Appendix I is amended as follows:

At Appendix I, the following will be changed:

The FOB plant Reference Price for Refined Sugar is \$0.2800 per pound commercial value (whether freely flowing or in totes weighing one (1) MT or greater as the sugar leaves the mill), as produced and measured on a dry basis.

The FOB plant Reference Price for Other Sugar is \$0.2300 per pound commercial value (whether freely flowing or in totes weighing one (1) MT or greater as the sugar leaves the mill), as produced and measured on a dry basis.

In addition, the following clause will be added to Appendix I when referencing the Reference Prices.

Mexican Signatory producers/exporters must ensure that the delivered sales price for all Sugar from Mexico exported to the United States must include all expenses, e.g., transportation, de-bagging, warehousing, handling, and packaging charges, in excess of the FOB plant Reference Price. As specified in Sections VII.B.1 and VII.B.2 of the Agreement, Commerce has the authority to request sales information, and to verify such information, which demonstrates compliance with the Reference Prices and terms of the Agreement.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce

Date

The following party hereby certifies that the members of the Mexican sugar industry agree to abide by all terms of the Amendment to the Agreement:

Juan Cortina Gallardo,
President of the Board, Cámara Nacional de Las Industrias Azucarera y Alcohólera (Mexican Sugar Chamber)

Date

[FR Doc. 2020-00970 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XR044]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Halibut Point Marine Services, LLC (HPMS) for authorization to take marine mammals incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 21, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief,

Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.davis@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Leah Davis, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for

taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On July 30, 2019, NMFS received a request from HPMS for an IHA to take marine mammals incidental to dock expansion activities. The application was deemed adequate and complete on October 21, 2019. HPMS’s request is for take of a small number of seven species of marine mammals by Level B harassment and Level A harassment. Neither HPMS nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

HPMS is proposing to add two additional dolphin structures and modify two existing dolphin structures at their deep water dock facility in Sitka Sound. The cruise industry is a major sector of Sitka’s economy, and the current HPMS facility currently does not meet the industry-required specifications for mooring newer, larger cruise vessels that are becoming increasingly more common. Construction at the dock facility will include vibratory pile installation and removal of temporary, template pile structures, vibratory and impact installation of permanent piles comprising the dolphins, and down-the-hole drilling to install bedrock anchors for the permanent piles. Vibratory pile removal and installation, impact pile installation, and drilling activity would introduce underwater sounds that may result in take, by Level A and Level B harassment, of marine mammals across approximately 55.9km² in Sitka sound.

Dates and Duration

The proposed IHA would be effective from October 1, 2020 to September 30, 2021. Construction is expected to occur over approximately 30 days, including 19 in-water work days, between October 2020 and February 2021. Pile driving, removal and drilling activity is expected to range from 126 minutes to 480 minutes each day and will occur during daylight hours. Construction between March 1 and June 15 is prohibited as a condition of a U.S. Corps of Engineers permit. Additionally, cruise ship activity will prevent work from occurring during from May 1 to October 1.

Specific Geographic Region

The HPMS deep water dock facility is located in Sitka Sound (Figure 1) approximately five miles north of downtown Sitka, Alaska at the north east end of Sitka Sound. Baseline ambient sound levels in Sitka Sound are unknown. However, the dock facility is an active marine industrial area that is frequented by ferries, fishing vessels, and tenders; barges and tugboats; and other commercial and recreational vessels that use the small-boat harbor north of the facility. HPMS operates a marine haulout facility that utilizes a Marine Travelift to haul approximately 200 vessels per year for maintenance work, and the dock facility will see 150 cruise ship dockings in 2019. Additionally, Alaska Marine Lines freight terminal is located adjacent to the HPMS facility, and the freight terminal receives twice-weekly freight container barges.

Marine mammals are present year round in the project vicinity. However, they are more common during spring and summer when herring and salmon are abundant in Sitka Sound.

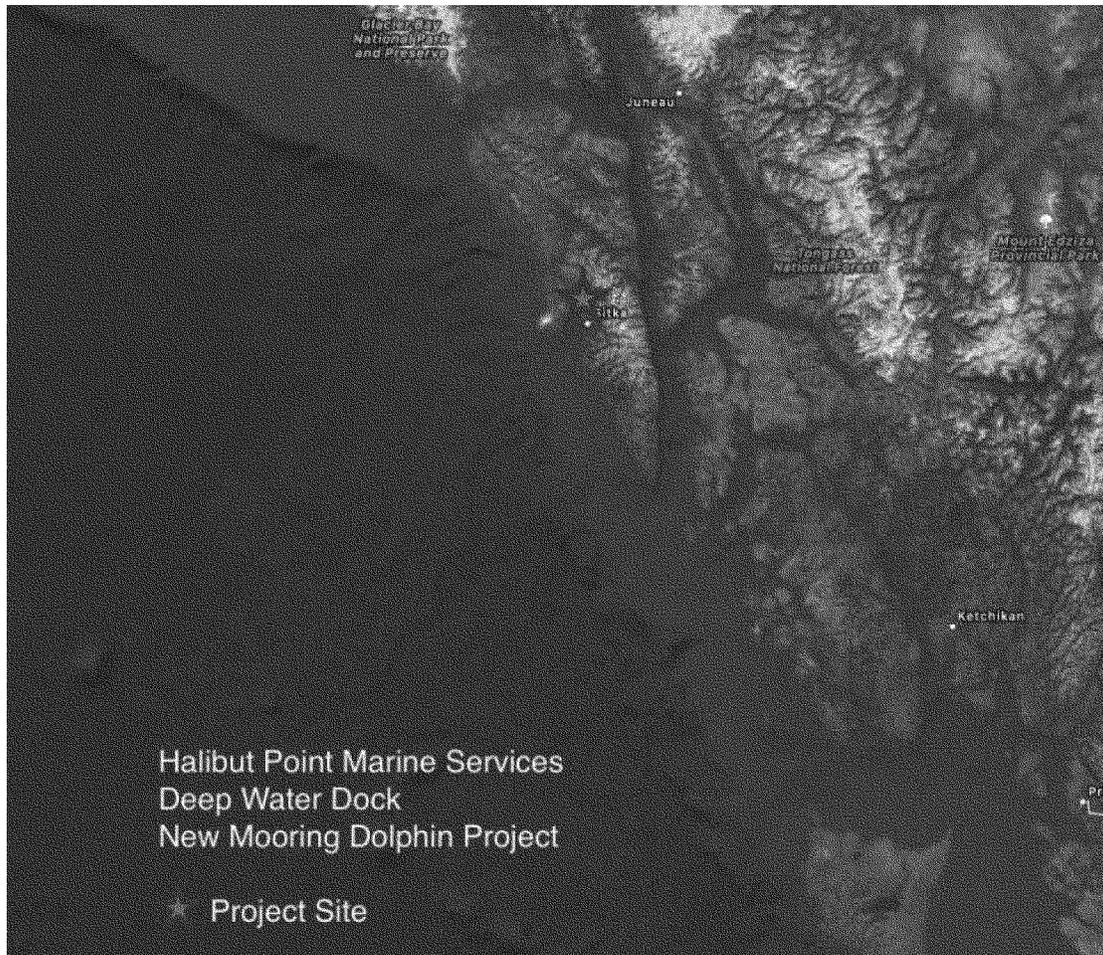


Figure 1: Project location in Sitka Sound, AK.

Detailed Description of Specific Activity
 HPMS is proposing to install two new dolphins, and to modify two existing

dolphins at their deep-water dock facility in Sitka Sound. Piles range in size from 30-inch to 48-inch in

diameter. Sound source levels for in-water project activities are included in Table 1.

TABLE 1—SOUND SOURCE LEVELS FOR PROJECT ACTIVITIES

| Pile size | Method | Source level (at 10m) | | | Literature source |
|-------------------------------------|-------------------------------------|-----------------------|--------|---------|----------------------------|
| | | dB RMS | dB SEL | dB peak | |
| 30-inch | Vibratory Pile Install/Remove | 168 | ..... | ..... | Denes <i>et al.</i> 2016. |
| 48-inch | Vibratory Pile Install | ^a 168 | ..... | ..... | Denes <i>et al.</i> 2016. |
| 48-inch (and 30-inch as necessary). | Impact Pile Install | 197.9 | 186.7 | 212 | Austin <i>et al.</i> 2016. |
| | Down-the-hole Drilling | 166.2 | ..... | ..... | Denes <i>et al.</i> 2016. |

^a This sound source level was adopted from Denes *et al.*, 2016. Based on pile size, a sound source level was selected from Austin *et al.*, 2016; however, that source level was lower than most appropriate Denes *et al.*, 2016 source level selected for vibratory installation and removal of the 30-inch piles. Because of the deep water and substrate at the project site, NMFS determined that using 168dB root mean square (RMS) for vibratory installation of the 48-inch piles provided the most conservative sound source level estimate.

Installation of New Dolphins

Construction of each new dolphin will begin with installation of the template piles. Four temporary, 30-inch piles will be installed at the sites of each new dolphin to guide the installation of the 48-inch, permanent steel piles. The

applicant expects that installation of the temporary piles will occur over two days per dolphin, and anticipates being able to use a vibratory hammer to install the full length of the piles through the overburden into the bedrock. The applicant notes that there is a chance that they may need to use an impact

hammer if driving conditions require, however, because impact driving of the 30-inch piles is not expected, the applicant conservatively plans to use the Level A and Level B harassment zones calculated for impact installation of 48-inch piles, discussed below.

Each new dolphin will be comprised of four 48-inch piles. Using the template to guide their placement, the 48-inch, permanent piles will be driven into the overburden with the vibratory hammer operated at a reduced energy setting, with breaks in driving to splice piles together. The permanent piles will be seated into the bedrock with an impact hammer. No more than two permanent piles will be installed per day.

After the permanent piles are fully installed, the contractor will drill a 33-inch diameter shaft approximately 4.6 meters (m) (15 feet) within the driven pile (down-the-hole drilling) and into the bedrock below the pile. The exact depth of the shaft will be determined by the geotechnical engineer. A rebar cage will be installed in each drilled shaft and filled with concrete. Once the permanent piles are in place with the concrete anchors, and pile caps have been installed, the temporary, template piles will be removed using a vibratory hammer. No more than two 30-inch template piles will be installed or removed per day.

Modifications to Existing Dolphins

On the existing dolphins, construction will begin with removal of the existing catwalk and pile caps on the mooring dolphins. A 48-inch pile will be installed over one existing 36-inch diameter pile on each dolphin. Existing pile caps and catwalks will be reinstalled. No down-the-hole drilling is proposed for modifications to the existing dolphins.

A new catwalk will also be installed (between new mooring dolphins and floating dock) as will a floating dock between existing mooring dolphin No 1 and the existing concrete pontoon on the shore-side of the existing catwalk. The new components will be constructed off-site and installed once the piling construction is complete.

While Steller sea lions haul out on buoys and navigational markers in Sitka

Sound and along the rocky shores of Sugarloaf south of the project site, these haulouts are far beyond in-water and in-air noise disturbance threshold for hauled-out otariids. There are no pinniped haul-out sites near the construction site, and no harassment from airborne sound is expected to result from project activities. Therefore, above-water construction activities, including the floating dock installation, will not be considered further in this document.

Materials and equipment would be transported to the project site by barge. While work is conducted in the water, anchored barges will be used to stage construction materials and equipment. The anchors will be kept below the surface and will not be a hazard to navigation.

TABLE 2—PROJECT COMPONENTS

| Activity | Number of piles |
|------------------------------|-----------------|
| 30-inch Steel | ^a 8 |
| 48-inch Steel | 10 |
| Down-the-Hole Drilling | 8 |

^a These piles are installed as part of a template to guide installation of the permanent, 48-inch piles. Each pile will be installed and later removed.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

Table 3 lists all species with expected potential for occurrence in Sitka, AK and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2018 SARs and draft 2019 SARs (e.g., Muto *et al.* 2019). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2018 and draft 2019 SARs (Muto *et al.*, 2019 and Carretta *et al.*, 2019).

TABLE 3—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

| Common name | Scientific name | Stock | ESA/MMPA status; strategic (Y/N) ¹ | Stock abundance (CV, N _{min} , most recent abundance survey) ² | PBR | Annual M/SI ³ |
|--|-------------------------------------|-----------------------------|---|--|------|--------------------------|
| Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) | | | | | | |
| Family Eschrichtiidae: Gray whale | <i>Eschrichtius robustus</i> | Eastern North Pacific | - , - , N | 26,960 (0.05, 25,849, 2016). | 801 | 139 |
| Family Balaenidae: North Pacific Right Whale .. | <i>Eubalaena japonica</i> | Eastern North Pacific | E, D, Y | 31 (0.226, 26, 2015) | 0.05 | 0 |
| Family Balaenopteridae (rorquals): Humpback whale | <i>Megaptera novaeangliae</i> | Central North Pacific | - , - , Y | 10,103 (0.300, 7,891, 2006). | 83 | 26 |
| <i>Fin whale</i> | <i>Balaenoptera physalus</i> | Northeast Pacific | E, D, Y | see SAR (see SAR, see SAR, 2013). | 5.1 | 0.4 |

TABLE 3—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA—Continued

| Common name | Scientific name | Stock | ESA/ MMPA status; strategic (Y/N) ¹ | Stock abundance (CV, N _{min} , most recent abundance survey) ² | PBR | Annual M/SI ³ |
|--|--|---|--|--|---------|-----------------------------|
| Minke whale | <i>Balaenoptera acutorostra</i> | Alaska | -, -, N | N/A (N/A, N/A, see SAR) | UND | 0 |
| Superfamily Odontoceti (toothed whales, dolphins, and porpoises) | | | | | | |
| Family Physeteridae: <i>Sperm whale</i> | <i>Physeter microcephalus</i> | North Pacific | E, D, Y | see SAR (see SAR, N/A, 2015). | see SAR | 4.7 |
| Family Delphinidae: <i>Killer whale</i> | <i>Orcinus orca</i> | Eastern North Pacific Alaska Resident. | -, -, N | 2,347 (N/A, 2,347, 2012) | 24 | 1 |
| | | Gulf of Alaska, Aleutian Islands, Bearing Sea Transient. | -, -, N | 587 (N/A, 587, 2012) | 5.87 | 1 |
| | | Eastern North Pacific Northern Resident. | -, -, N | 302 c (N/A, 302, 2018) ... | 2.2 | 0.2 |
| | | West Coast Transient | -, -, N | 243 (N/A, 243, 2009) | 2.4 | 0 |
| <i>Pacific white-sided dolphin</i> | <i>Lagenorhynchus obliquidens</i> | North Pacific | -, -, N | 26,880 (UNK, UNK, 1990). | UND | 0 |
| Family Phocoenidae (por- poises): <i>Dall's porpoise</i> | <i>Phocoenoides dalli</i> | Alaska | -, -, N | 83,400 (0.097, NA, 1991) | UND | 38 |
| <i>Harbor porpoise</i> | <i>Phocoena phocoena</i> | Southeast Alaska | -, -, Y | see SAR (see SAR, see SAR, 2012). | 8.9 | 34 |
| Order Carnivora—Superfamily Pinnipedia | | | | | | |
| Family Otariidae (eared seals and sea lions): <i>California sea lion</i> | <i>Zalophus californianus</i> | U.S. | -, -, N | 257,606 (N/A, 233,515, 2014). | 14,011 | ≥321 |
| <i>Northern fur seal</i> | <i>Callorhinus ursinus</i> | Eastern Pacific | -, D, Y | 620,660 (0.2, 525,333, 2016). | 11,295 | 399 |
| <i>Steller sea lion</i> | <i>Eumetopias jubatus</i> | Eastern | -, -, N | 43,201 a (see SAR, 43,201, 2017). | 2592 | 113 |
| <i>Steller sea lion</i> | <i>Eumetopias jubatus</i> | Western | E, D, Y | 53,624 a (see SAR, 53,624, 2018). | 322 | 247 |
| Family Phocidae (earless seals): <i>Harbor seal</i> | <i>Phoca vitulina</i> | Sitka/Chatham Straight | -, -, N | 13,289 (see SAR, 11,883, 2015). | 356 | 77 |

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁴ These values are the best estimate of pup and non-pup counts which have not been corrected to account for animals at sea during abundance surveys.

Note—Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 3. However, the temporal and/or spatial occurrence of western north Pacific gray whales, northern right whale, fin whale, sperm whale, pacific white-sided dolphin, Dall's porpoise, California sea lion, and Northern fur seal is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Marine mammal monitoring reports are available for three recent construction projects in the Sitka area (Gary Paxton Industrial Park Dock Modification Project, 82 FR 47717, October 13, 2017; Biorka Island Dock Replacement Project, 82 FR 50397, October 31, 2017; O'Connell Bridge Lightening Float Pile Replacement

Project, 84 FR 27288, June 12, 2019). These reports were referenced in determining marine mammals likely to be present within the Old Sitka Dock project area. NMFS acknowledges seasonal differences between the Old Sitka Dock project and available monitoring reports.

North Pacific Right Whale, fin whale, sperm whale, Dall's porpoise, and northern fur seal have not been reported in monitoring reports available for the recent Sitka-area, and were not observed during the Straley *et al.* (2017) surveys. Straley *et al.* (2017) only observed seven Pacific white-sided dolphins during eight years of surveys, however, no observations were reported in monitoring reports available for the recent Sitka-area. California sea lions are rarely sighted in southern Alaska.

NMFS' anecdotal sighting database includes four sightings in Seward and Kachemak Bay, and they were also documented during the Apache 2012 seismic survey in Cook Inlet. However, California sea lions have not been reported in monitoring reports available for the recent Sitka-area construction projects.

In addition, the northern sea otter may be found in Sitka. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

Gray whales occur exclusively in the North Pacific Ocean. The Eastern North Pacific stock of gray whales inhabit California and Mexico in the winter months, and the Chukchi, Beaufort, and Bering Seas in northern Alaska in the

summer and fall. Gray whales have also been observed feeding in waters off Southeast Alaska during the summer (NMFS 2019).

The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Baranof Island from late March to May and then return south in October and November (Jones *et al.* 1984, Ford *et al.* 2013). The project area is well inside Sitka Sound on the west coast of Baranof Island.

During 8 years of observations in Sitka Sound, Straley *et al.* (2017) observed just one group of three gray whales. However, Sitka Sound is within a gray whale migratory corridor Biologically Important Area (BIA) (Ferguson *et al.*, 2015). Construction is expected to occur during the beginning of the period of highest density in the BIA during the southbound migration (November to January). The Sound is also within the Southeast Alaska BIA, an important area for gray whale feeding. Construction is expected to overlap with end of period with the highest gray whale densities in the Southeast Alaska BIA (May through November).

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. This event has been declared an Unusual Mortality Event (UME), though a cause has not yet been determined. More information is available at <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Humpback Whale

Humpback whales (*Megaptera novaeangliae*) are the most commonly observed baleen whale in Sitka Sound. They have been observed in Southeast Alaska in all months of the year (Baker *et al.* 1985, 1986), although they are most common in Sitka Sound's Eastern Channel in November, December, and January (Straley *et al.*, 2017). In late fall and winter, herring sometimes overwinter in deep fjords in Silver Bay and Eastern Channel, and humpback whales aggregate in these areas to feed on them. In the summer when prey is dispersed throughout Sitka Sound, humpback whales also disperse throughout the Sound (Straley *et al.*, 2017). Humpbacks in Sitka Sound are expected to be from the Central North Pacific stock.

Humpback whales have been frequently observed during construction

projects in Sitka Sound, including the Biorka Island Dock Replacement Project (Turnagain Marine Construction, 2018) and the Sitka GPIIP Multipurpose Dock Project (Turnagain Marine Construction, 2017). There is no recorded observation data from the immediate project area, however, HPMS staff work year-round at the project site and note that humpback whales are rarely observed during the months from October through mid-February. HPMS staff noted that humpback whale activity increases starting in late February and humpback whale observations are frequent from March to mid-April. (HPMS, pers. comm. 2019). This activity coincides with the migration of herring into Sitka sound for spawning.

According to Wade *et al.* 2016, Humpback whales in Southeast Alaska are most likely to be from the Hawaii DPS (distinct population segment, 93.9 percent probability), with a 6.1 percent probability of being from the threatened Mexico DPS. Critical habitat was recently proposed for the humpback whale in Southeast Alaska, including Sitka Sound (84 FR 54354, October 9, 2019), but it has not yet been finalized. However, Sitka Sound is within seasonal humpback whale feeding BIAs from March through November (Ferguson *et al.*, 2015). Construction is expected to occur during the tail end of the seasonally specific BIA.

Minke Whale

Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters (Jefferson *et al.*, 2008). The International Whaling Commission has identified three minke whale stocks in the North Pacific: one near the Sea of Japan, a second in the rest of the western Pacific (west of 180° W), and a third, less concentrated stock throughout the eastern Pacific. NMFS further splits this third stock between Alaska whales and resident whales of California, Oregon, and Washington (Muto *et al.*, 2018). Minke whales are found in all Alaska waters, though there are no population estimates for minke whales in southeast Alaska.

In Alaska, minke whales feed primarily on euphausiids and walleye pollock. Minke whales are generally found in shallow, coastal waters within 200 m (656 ft) of shore (Zerbini *et al.*, 2006). Dedicated surveys for cetaceans in southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait, with small concentrations near the entrance of Glacier Bay. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in

all seasons and years (Dahlheim *et al.*, 2009). Additionally, Minke whales were observed during the Biorka Island Dock Replacement Project at the mouth of Sitka Sound (Turnagain Marine Construction, 2018).

Killer Whale

Killer whales (*Orcinus orca*) have been observed in all oceans, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales occur along the entire coast of Alaska (Braham and Dahlheim, 1982), inland waterways of British Columbia and Washington (Bigg *et al.* 1990), and along the outer coasts of Washington, Oregon, and California (Green *et al.* 1992; Barlow 1995, 1997; Forney *et al.* 1995). Eight stocks of killer whales are recognized within the Pacific U.S. Exclusive Economic Zone (Muto *et al.*, 2018). Of those, the Alaska Resident, Northern Resident, Gulf of Alaska, Aleutian Islands and Bering Sea Transient, and West Coast Transient may occur in the project area. Transient killer whales, primarily from the West Coast transient stock, occur most frequently in the project area.

Transient killer whales hunt and feed primarily on marine mammals, including harbor seals, Dall's porpoises, harbor porpoises, and sea lions. Resident killer whale populations in the eastern north Pacific feed mainly on salmonids, showing a strong preference for Chinook salmon (NMFS 2016).

The Alaska Resident stock occurs from southeast Alaska to the Aleutian Islands and Bering Sea. Photo-identification studies between 2005 and 2009 identified 2,347 individuals in this stock, including approximately 121 in southeast Alaska (Muto *et al.*, 2019). The Northern Resident stock occurs from Washington north through part of southeast Alaska and consists of 261 individuals. The Gulf of Alaska, Aleutian islands, and Bering Sea Transient stock occurs from the northern British Columbia coast to the Aleutian Islands and Bering Sea. The West Coast Transient stock occurs from California north through southeast Alaska (Muto *et al.*, 2019). Dahlheim *et al.*, (2009) noted a 5.2 percent annual decline in transient killer whales observed in southeast Alaska between 1991 and 2007.

Both resident and transient killer whales were observed in southeast Alaska during all seasons during surveys between 1991 and 2007, in a variety of habitats and in all major waterways, including Lynn Canal, Icy Strait, Stephens Passage, Frederick Sound, and upper Chatham Strait (Dahlheim *et al.*, 2009). There does not

appear to be strong seasonal variation in abundance or distribution of killer whales, but Dahlheim *et al.*, (2009) observed substantial variability among different years. HPMS staff have only observed killer whales on one occasion from the project site in the past five years (HPMS pers. comm. 2019).

Harbor Porpoise

Harbor porpoise (*Phocoena phocoena*) are common in coastal waters. They frequently occur in coastal waters of southeast Alaska and are observed most frequently in waters less than 350 ft (107 m) deep (Dahlheim *et al.* 2009). There are three harbor porpoise stocks in Alaska. The Southeast Alaska stock occurs from Dixon Entrance to Cape Suckling, Alaska and is the only stock that occurs in the action area (Muto *et al.* 2019).

Harbor porpoises commonly frequent nearshore waters, but are not common in the project area. Monthly tallies from observations from Sitka's Whale Park show harbor porpoises occurring infrequently in or near the action area in March, April, and October between 1994 to 2002 (Straley *et al.*, 2017). Protected Species Observers (PSO) did not observe harbor porpoises during monitoring for recent construction projects in the Sitka, AK area (Petro Marine Dock, Windward, 2017; GPIIP dock, Turnagain Marine Construction, 2017; Biorka Island Dock Replacement, Turnagain Marine Construction, 2018; Sitka O'Connell Bridge Lightering Float Pile Replacement Project, CBS 2019). Additionally, Halibut Point Marine staff indicated that they have not seen a harbor porpoise near the project site during the past five years (HPMS, pers. com. 2019).

Harbor Seal

Harbor seals (*Phoca vitulina*) are common in the inside waters of southeastern Alaska, including in Sitka Sound. Harbor seals in southeast Alaska are typically non-migratory with local movements attributed to factors such as prey availability, weather, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981; Hastings *et al.* 2004). Harbor seals haul out of the water periodically to rest, give birth, and nurse their pups. According to the Alaska Fisheries Science Center's list of harbor seal haul-out locations, the closest listed haulout (id CE49 name CE49C) is located in Sitka Sound approximately 6.4 km (3.98 mi) southwest, of the project site (AFSC, 2018).

Harbor seals in the project area are from the Sitka/Chatham Straight stock (Muto *et al.*, 2019). Harbor seal

observations have been documented in monitoring reports for construction projects in the Sitka area. They were observed on 10 of 21 monitoring days for GPIIP dock construction between October and November 2017 (Turnagain Marine Construction, 2017), two of eight days of monitoring for the Petro Marine dock in January 2017 (Windward 2017), one of three days at Sitka O'Connell Bridge Lightering Float Pile Replacement Project (CBS, 2019), and were the most commonly observed marine mammal species during monitoring for the Biorka Island Dock Replacement Project (Turnagain Marine Construction, 2018). Additionally, Straley *et al.*, (2017) observed harbor seals during most months of monitoring (September through May) from Whale Park between 1994 and 2002, except in December and May.

Observations during the original construction of the Halibut Point Marine Services dock facility did not record any harbor seals within the 200-meter shutdown zone during pile driving operations. Observers did indicate observing individual seals outside the 200-meter zone two to three times per week. (McGraw, pers. com., 2019).

Steller Sea Lion

Steller sea lions (*Eumetopias jubatus*) range extends from the North Pacific Rim from northern Japan to California with areas of abundance in the Gulf of Alaska and Aleutian Islands (Muto *et al.*, 2019). In 1997, based on demographic and genetic dissimilarities, NMFS identified two DPSs of Steller sea lions under the ESA: a western DPS (western stock) and an eastern DPS (eastern stock). The western DPS breeds on rookeries located west of 144°W in Alaska and Russia, whereas the eastern DPS breeds on rookeries in southeast Alaska through California.

Movement occurs between the western and eastern DPS of Steller sea lions, and increasing numbers of individuals from the western DPS have been seen in Southeast Alaska in recent years (NMFS 2013, Fritz *et al.* 2013, 2016; DeMaster 2014). This DPS-exchange is especially evident in the outer Southeast coast of Alaska, including Sitka Sound. The distribution of marked animals (along with other demographic data) indicates that movements of Steller sea lions during the breeding season result in a small net annual movement of animals from southeast Alaska (eastern DPS) to the western DPS (approximately 80 sea lions total) but a much larger inter-regional movement between the western DPS and the eastern DPS (approximately 1,000 sea lions per year;

Fritz *et al.* 2016). According to Hastings *et al.* (2019), 3.1 percent of Steller sea lions in the Sitka area are from the western DPS.

Critical habitat has been defined in Southeast Alaska at major haulouts and major rookeries (50 CFR 226.202), but the project action area does not overlap with Steller sea lion critical habitat. The Biorka Island haulout is the closest designated critical habitat and is over 25 kilometers southwest of the project area.

Steller sea lions are common in the project area. They were observed during every month of monitoring (September to May) between 1994 and 2002 (Straley *et al.*, 2017). Individual sea lions were seen on 19 of 21 days during monitoring for GPIIP dock construction between October and November 2017 (Turnagain Marine Construction, 2017), and three of eight days of monitoring for the Petro Marine dock in January 2017 (Windward 2017).

Steller sea lions were also observed during the Sitka O'Connell Bridge Lightering Float Pile Replacement Project (CBS, 2019) and the Biorka Island Dock Replacement Project (Turnagain Marine Construction, 2018). During the original construction of the Halibut Point Marine Services dock facility, no Steller sea lions were recorded within the 200-meter shutdown zone during pile driving operations; however, observers indicated observing individual sea lions outside the 200-meter zone four to five times per week. (McGraw, 2019).

During the summer months, sea lions are seen in the project area daily. Two to three individual sea lions feed on fish carcasses dumped adjacent to the project site from fishing charter operations in a nearby private marina. However, during the proposed project timing of fall and winter, the charter fishing operations are not underway and the sea lions are not as active in the area. (McGraw, pers. com., 2019).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available

behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018)

described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower

bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

| Hearing group | Generalized hearing range* |
|--|----------------------------|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (five cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.*, gray whale, humpback whale, minke whale), one is classified as mid-frequency cetaceans (*i.e.*, killer whale), and one is classified as high-frequency cetaceans (*i.e.*, harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely

impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary

by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, vibratory pile removal, and down-the-hole drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward 1997 in Southall *et al.* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate.

Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

The likely or possible impacts of HPMS's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and down-the-hole drilling is the primary means by which marine mammals may be harassed from HPMS's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). In general, exposure to pile driving and removal and down-the-hole drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and removal and down-the-hole drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.*, impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of

exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how an animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the

minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-

induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving and vibratory pile driving, and in this project, down-the-hole drilling. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous

experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, ADOT&PF documented observations of marine mammals during construction activities (*i.e.*, pile driving and down-hole drilling) at the Kodiak Ferry Dock (see *80 FR 60636* for Final IHA). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the behavioral disturbance zone during pile driving or drilling (*i.e.*, documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 m of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were

travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.*, small area movements). Monitoring reports from other recent pile driving projects have observed similar behaviors, including several projects near Sitka (CBS, 2019; Turnagain Marine Construction, 2017; Turnagain Marine Construction, 2018).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal’s ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal’s hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the

background level of underwater sound is high (e.g. on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been ‘taken’ because of exposure to underwater sound above the behavioral harassment thresholds, which are, in all cases, larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

HPMS’s construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact and vibratory pile driving, and down-the-hole drilling,

elevated levels of underwater noise would ensonify the canal where both fish and mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

In-Water Construction Effects on Potential Foraging Habitat

HPMS’s project involves installing two new dolphins and modifying two existing dolphins. The total seafloor area affected from installing new piles is a very small area compared to the vast foraging area available to marine mammals in Sitka Sound. Additionally, the new pilings installed would provide substrate for invertebrate prey such to settle on.

Avoidance by potential prey (i.e., fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Sitka Sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed (and removed in the case of the temporary templates). The sediments on the seafloor will be disturbed during pile driving; however, suspension will be brief and localized and is unlikely to measurably affect marine mammals or their prey in the area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Impacts to habitat and prey are expected to be temporary and minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey (Fish)

The action area supports marine habitat for prey species including large

populations of anadromous fish including Pacific salmon (five species), cutthroat and steelhead trout, and Dolly Varden (ADFG 2018); other species of marine fish such as halibut, lingcod, Pacific cod, greenling, herring, eulachon, and rockfish (ADFG 2018, NMFS 2012); and euphausiids (krill) (NMFS 2012). Many anadromous streams flow into nearby Sitka Sound including Granite Creek, No Name Creek, and Stargavin Creek however, there are no anadromous fish streams at the project site (ADFG 2018).

Construction activities would produce continuous (*i.e.*, vibratory pile driving, down-the-hole drilling) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events, the relatively small areas being affected, and the relatively small number of overall days on which pile driving activities will occur, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term

consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.* pile driving and removal, down-the-hole drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species and phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for other species/groups. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we

describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μ Pa) root mean square (rms) for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources.

HPMS's proposed activity includes the use of continuous (vibratory pile driving and removal, down-the-hole drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μ Pa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). HPMS's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive

(vibratory pile driving and removal, down-the-hole drilling) sources. These thresholds are provided in the table below. The references, analysis,

and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS onset acoustic thresholds* (received level) | |
|-------------------------------------|---|-----------------------------------|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB | Cell 2: $L_{E,LF,24h}$: 199 dB. |
| Mid-Frequency (MF) Cetaceans | Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB | Cell 4: $L_{E,MF,24h}$: 198 dB. |
| High-Frequency (HF) Cetaceans | Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB | Cell 6: $L_{E,HF,24h}$: 173 dB. |
| Phocid Pinnipeds (PW) | Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB | Cell 8: $L_{E,PW,24h}$: 201 dB. |
| (Underwater) | | |
| Otariid Pinnipeds (OW) | Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB | Cell 10: $L_{E,OW,24h}$: 219 dB. |
| (Underwater) | | |

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of

the project (*i.e.*, impact pile driving, vibratory pile driving and removal, down-the-hole drilling). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 55.9km² (21.6mi²), and the calculated distance to the farthest behavioral harassment isopleth is approximately 15.8km (9.8mi). Both are governed by landmasses in the Sound.

The project includes vibratory and impact pile installation of steel pipe

piles, vibratory removal of steel pipe piles, and down-the-hole drilling. Source levels of pile installation and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in Table 6. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 6—SOUND SOURCE LEVELS FOR PILE DRIVING METHODS AND DOWN-THE-HOLE DRILLING

| Pile size and method | Source level (SPL at 10m) | | | Literature source |
|---|---------------------------|-------------|-------------|-----------------------------|
| | dB SEL ^b | dB RMS | dB peak | |
| 30-inch steel vibratory installation/removal | ^a 168.0 ..... | ..... | ..... | Denes <i>et al.</i> , 2016. |
| 48-inch steel vibratory installation | ^a 168.0 ..... | ..... | ..... | Denes <i>et al.</i> , 2016. |
| 33-inch drilled anchor shaft (down-the-hole drilling) | 166.2 ..... | ..... | ..... | Denes <i>et al.</i> , 2016. |
| 48-inch steel impact installation (<i>and 30-inch steel impact installation, as necessary</i>) ^c . | 197.9 | 186.7 | 212.0 | Austin <i>et al.</i> , 2016 |

^a Source levels used for the impact analyses of vibratory installation/removal of 30-inch and 48-inch piles are the same. The most reasonable proxy source level for the 30-inch pile (including comparison of water depth and substrate) was 168.0 dB RMS, the median vibratory summary value from the Auke Bay site in Denes *et al.* (2016). For the 48-inch piles, NMFS determined that the median value from pile IP5 in Table 11 of Austin *et al.* (2016), 166.8 dB RMS, was the most appropriate proxy source level; however, this source level was lower than the proxy source level for the 30-inch pile. Typically, pile driving source levels are louder for installation/removal of larger piles. In effort to conduct a conservative analysis of the effects, NMFS adopted 168.0 dB RMS as a proxy source level for vibratory installation of the 48-inch piles as well.

^b Sound exposure level (dB re 1 μ Pa²-sec).

^c As previously noted, the applicant does not expect impact pile driving of the 30-inch piles to be necessary. However, if it is, the applicant will conservatively use source levels and Level A and Level B harassment zone calculations, and monitoring zones for impact pile driving of 48-inch steel piles.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions,

current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}_{10} (R_1/R_2),$$

Where:

- TL = transmission loss in dB
- B = transmission loss coefficient
- R₁ = the distance of the modeled SPL from

the driven pile, and R_2 = the distance from the driven pile of the initial measurement
Absent site-specific acoustical monitoring with differing measured

transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Old Sitka Dock are not available,

therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 7—PILE DRIVING SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

| Pile size and method | Source level at 10m (dB re 1 μ Pa rms) | Level B threshold (dB re 1 μ Pa rms) | Propagation (xLogR) | Distance to Level B threshold (m) |
|---|--|--|---------------------|-----------------------------------|
| 30-inch steel vibratory installation/removal | ^a 168.0 | 120 | 15 | 15,849 |
| 48-inch steel vibratory installation | ^a 168.0 | 120 | 15 | 15,849 |
| 33-inch drilled anchor shaft (down-the-hole drilling) | 166.2 | 120 | 15 | 12,023 |
| 48-inch steel impact installation (and 30-inch steel impact installation, as necessary) | 197.9 | 160 | 15 | 3,363 |

^aAs noted in Table 6, source levels for the 30-inch and 48-inch steel pipe piles are the same.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We

note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS

continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 8—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

| Pile size and installation method | 48-inch pile vibratory installation | 30-inch pile vibratory installation/removal | 33-inch drilled anchor shaft (down-the-hole drilling) | 48-inch pile impact installation (and 30-inch steel impact installation, as necessary) (SEL _{cum}) | 48-inch pile impact installation (PK) |
|--|-------------------------------------|---|---|--|---------------------------------------|
| Spreadsheet Tab Used. | A.1) Vibratory pile driving. | A.1) Vibratory pile driving. | A.1) Vibratory pile driving. | E.1) Impact pile driving. | E.1) Impact pile driving |
| Weighting Factor Adjustment (kHz). | 2.5 | 2.5 | 2.5 | 2 | 2. |
| Source Level (SPL @ 10m). | 168.0 dB rms | 168.0 dB rms | 166.2 dB rms | 186.7 dB SEL | 212 dB peak. |
| Number of piles within 24-h period. | 2 | 2 | 2 | 2. | |
| Duration to drive a single pile (minutes). | 60 | 30 | 240. | | |
| Strike Duration (seconds). | | | | | |
| Number of strikes per pile. | | | | 135. | |
| Activity Duration (seconds) within 24-h period. | 7,200 | 3,600 | 28,800. | | |
| Propagation (xLogR) .. | 15 | 15 | 15 | 15. | |
| Distance from source level measurement (meters). | 10 | 10 | 10 | 10 | 10. |

TABLE 9—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

| Activity | Level A harassment zone (m) | | | | |
|---|-----------------------------|-------------------------|--------------------------|------------------|-------------------|
| | Low-frequency cetaceans | Mid-frequency cetaceans | High-frequency cetaceans | Phocid pinnipeds | Otariid pinnipeds |
| 30-inch Pile Vibratory Installation/Removal | 20.0 | 1.8 | 29.6 | 12.2 | 0.9 |
| 48-inch Pile Vibratory Installation | 31.8 | 2.8 | 46.9 | 19.3 | 1.4 |

TABLE 9—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS—Continued

| Activity | Level A harassment zone (m) | | | | |
|--|-----------------------------|-------------------------|--------------------------|------------------|-------------------|
| | Low-frequency cetaceans | Mid-frequency cetaceans | High-frequency cetaceans | Phocid pinnipeds | Otariid pinnipeds |
| 33-inch drilled anchor shaft (down-the-hole drilling) | 60.7 | 5.4 | 89.7 | 36.9 | 2.6 |
| 48-inch Pile Impact Installation (and 30-inch steel impact installation, as necessary) (SEL _{cum}) | 736.2 | 26.2 | 876.9 | 394.0 | 28.7 |
| 48-inch Pile Impact Installation (and 30-inch steel impact installation, as necessary) (PK) | 3.4 | ..... | 46.4 | 4.0 | ..... |

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate.

Gray Whale

Straley *et al.*, 2017 documented a group of three gray whales during surveys between 2002 and 2015, however, no gray whales were observed during monitoring for other recent construction projects in the area (CBS, 2019; Turnagain Marine Construction, 2017; Turnagain Marine Construction, 2018). NMFS estimates, that one group of three gray whales may occur within the Level B harassment zone during construction (3 animals × 1 group × 1 month = 3 Level B harassment takes) and therefore, requests three Level B harassment takes of gray whale.

The largest Level A harassment zone for low-frequency cetaceans extends 736.2m from the source during impact pile driving of 48-inch piles (or impact pile driving of 30-inch steel piles, as necessary) (Table 9). HPMS is planning to implement activity-specific shutdown zones (Table 11), which, especially in combination with the already low likelihood of grey whales entering the area, are expected to eliminate the potential for Level A harassment take of gray whale. Therefore, takes of gray whale by Level A harassment have not been requested, and are not proposed to be authorized.

Minke Whale

Two minke whales were taken during the Biorca Island Dock Replacement project at the mouth of Sitka Sound (Turnagain Marine Construction, 2018). Based on monitoring data from Biorca Island, three Level B minke whale takes were authorized for the Sitka O’Connell Bridge project, however, no minke whale takes were reported. Both projects occurred in the month of June. Straley *et al.*, (2017) did not report any

observations of minke whales. However, because they were observed during the Biorca Island Dock Replacement project, NMFS estimates, that one group of three minke whales may occur within the Level B harassment zone during the project, and therefore, requests three Level B harassment takes of minke whale (3 animals × 1 group × 1 month = 3 Level B harassment takes).

The largest Level A harassment zone for low-frequency cetaceans extends 736.2m from the source during impact pile driving of 48-inch piles (or impact pile driving of 30-inch steel piles, as necessary) (Table 9). HPMS is planning to implement activity-specific shutdown zones (Table 11), which, especially in combination with the already low likelihood of minke whales entering the area, are expected to eliminate the potential for Level A harassment take of minke whale. Therefore, takes of minke whale by Level A harassment have not been requested, and are not proposed to be authorized.

Humpback Whale

Humpback whales frequent the action area and are likely to enter the Level B harassment zone during construction. Humpback whales typically occur in groups of two to four animals in the area (Straley *et al.*, 2017). Given the large Level B harassment zone, HPMS estimates, and NMFS preliminarily concurs, that four groups of two humpback whales may occur within the Level B harassment zone on each of the 19 days of in-water construction (2 animals in a group × 4 groups each day × 19 days = 152 Level B harassment takes). Therefore, the HPMS requests authorization for 152 Level B takes of humpback whales.

For ESA Section 7 consultation purposes, NMFS estimates that 93.9 percent of humpback whales in the project area are from the non-listed Hawaii DPS, and 6.1 percent of humpback whales in the project area are from the threatened Mexico DPS (Wade *et al.*, 2016). Therefore, of the 152 Level B harassment takes requested, 143 takes are expected to be of humpback whales

from the Hawaii DPS and 9 takes are expected to be of humpbacks from the Mexico DPS.

The largest Level A harassment zone for humpback whale extends 736.2m from the source during impact pile driving of 48-inch piles (Table 9). HPMS is planning to implement activity-specific shutdown zones (Table 11), which, given the behavior and visibility of humpback whales, are expected to eliminate the potential for Level A harassment take of humpback whale. Therefore, takes of humpback whale by Level A harassment have not been requested, and are not proposed to be authorized.

Killer Whale

Forty-four (44) killer whales were observed during 190 hours of observation from Whale Point between September and May from 1994 to 2002 (Straley *et al.*, 2017). Three killer whales were documented in Sitka Channel on one day in January 2017 during the Petro Marine Dock construction (Windward 2017). Seven killer whales were observed in June, but no killer whales were seen in July, August, or September in 2018 at Biorca Island (Turnagain Marine Construction, 2018). No killer whales were observed in October or November 2017 on the western side of Eastern Channel or Silver Bay (Turnagain Marine Construction, 2017).

During work on GPIIP Dock, groups of five and 10 individuals were seen a few times, but, typically, single whales were observed near the mouth of Silver Bay (Turnagain Marine Construction, 2017). Straley *et al.*’s (2017) survey data indicates a typical killer whale group size between 4 and 8 individuals in Sitka Sound. Therefore, taking all of this information into consideration, HPMS estimates, and NMFS preliminarily concurs, that one group of eight killer whales may enter the Level B harassment zone each week (8 animals in a group × 1 group per week × 3 weeks of activity = 24 Level B harassment takes) and has therefore, requested a total of 24 Level B harassment takes of

killer whales. Killer whales from all four stocks listed in Table 3 have the potential to be taken by Level B harassment.

The largest Level A harassment zone for mid-frequency cetaceans extends 26.2m from the source during impact installation of the 48-inch piles (or impact pile driving of 30-inch steel piles, as necessary) (Table 9). HPMS is planning to implement activity-specific shutdown zones (Table 11), which, given the small size of the zone and the visibility of killer whales, are expected to eliminate the potential for Level A harassment take of killer whale. Therefore, takes of killer whale by Level A harassment have not been requested, and are not proposed to be authorized.

Harbor Porpoise

Harbor porpoises commonly frequent nearshore waters, but are not common in the project vicinity. Monthly tallies from observations from Sitka's Whale Park show harbor porpoises occurring infrequently in or near the action area in March, April, and October between 1994 to 2002 (Straley *et al.*, 2017). However, no harbor porpoises have been observed more recently during monitoring. No harbor porpoises were seen during the Petro Marine Dock construction monitoring in January 2017 (Windward, 2017), during monitoring for the GPIIP dock between October of November of 2017 (Turnagain Marine Construction, 2017), or during monitoring for the Sitka O'Connell Bridge project in 2019 (CBS, 2019). Halibut Point Marine staff indicated that they have not seen a harbor porpoise near the project site during the past 5 years (HPMS 2019).

The mean group size of harbor porpoise in Southeast Alaska is estimated at two to three individuals (Dahlheim *et al.* 2009), however, in Straley *et al.* (2017) found that typical group size in the project area is five animals. HPMS conservatively estimates, and NMFS concurs that one group of five harbor porpoises may enter the Level B harassment zone on each project day (5 animals in a group \times 1 group per day \times 19 project days = 95 Level B harassment takes) and has therefore, requested a total of 95 Level B harassment takes of harbor porpoise.

Given the size of the Level A harassment zone and the relative expected frequency of harbor porpoises entering the zone, we are proposing to require a shutdown zone that is smaller than the area within which Level A harassment could occur in order to ensure that pile driving is not interrupted to the degree that the activities are extended over additional

days. Therefore, there is a small chance that Level A harassment could occur and NMFS is proposing to authorize Level A harassment take of one harbor porpoise on each day that impact pile driving is expected occur (see *Description of Proposed Activity*) for a total of five Level A harassment takes (1 Level A harassment take \times 5 impact pile driving days = 5 Level A harassment takes). NMFS recognizes that HPMS may install the piles at a slightly slower rate resulting in more impact pile driving days; however, given the extremely short duration of impact pile driving on each pile, NMFS still would not expect that Level A harassment would exceed five takes. No Level A harassment takes of harbor porpoise were recorded in the Sitka GPIIP Dock project (Turnagain Marine Construction, 2017) despite Level A harassment takes included in the authorizations. However, the Old Sitka Dock project has a longer work period and larger Level A harassment zones than the Sitka GPIIP Dock project.

Harbor Seal

Harbor seals are common in the inside waters of southeastern Alaska, including in Sitka Sound and within the project action area. The species were seen during most months of monitoring (September through May) from Whale Park between 1994 and 2002, except in December and May (Straley *et al.*, 2017). Harbor seals were seen on 10 out of the 21 days of monitoring for GPIIP dock construction between October and November 2017, and two out of eight days of monitoring for the Petro Marine dock in January 2017 (Turnagain Marine Construction, 2017 and Windward 2017).

Straley *et al.*'s (2017) data indicates a typical group size between one and two harbor seals. Observations during the original construction of the Halibut Point Marine Services dock facility recorded zero harbor seals within the 200-meter shutdown zone during pile driving operations. Observers indicated only observing individual seals outside the 200-meter zone two to three times per week. (McGraw, pers. com., 2019).

Harbor seals haul out of the water periodically to rest, give birth, and nurse their pups. According to the Alaska Fisheries Science Center's list of harbor seal haul-out locations, the closest listed haulout (id CE49) is located in Sitka Sound approximately 6.4 km (3.5 nmi) southwest, of the project site (AFSC, 2019).

HMPS estimates, and NMFS preliminarily concurs, that three groups of three harbor seals may enter the Level B harassment zone on each project day

and has, therefore, requested a total of 171 Level B harassment takes of harbor seal (3 animals in a group \times 3 groups per day \times 19 days = 171 Level B harassment takes).

Given the size of the zone and the relative expected frequency of harbor seals entering the zone, we are proposing a to require a shutdown zone that is smaller than the area within which Level A harassment could occur in order to ensure that pile driving is not interrupted to the degree that the activities are extended over additional days. Therefore, there is a small chance that Level A harassment could occur, and NMFS is proposing to authorize Level A harassment take of one harbor seal on each day that impact pile driving is expected occur (see *Description of Proposed Activity*) for a total of five Level A harassment takes (1 Level A harassment take \times 5 impact pile driving days = 5 Level A harassment takes). NMFS recognizes that HPMS may install the piles at a slightly slower rate resulting in more impact pile driving days; however, given the extremely short duration of impact pile driving on each pile, NMFS still would not expect that Level A harassment would exceed five takes. No Level A harassment takes of harbor seal were recorded for either the Sitka O'Connell Bridge project (CBS, 2019), the Sitka GPIIP Dock project (Turnagain Marine Construction, 2017), however, the Old Sitka Dock project has a longer work period, and larger Level A harassment zones than the Sitka GPIIP Dock project.

Steller Sea Lion

Steller sea lions are common in the project area. They were observed during every month of monitoring (September to May) between 1994 and 2002 (Straley *et al.*, 2017). Steller sea lions were also observed on 19 of 21 days in Silver Bay and Easter Channel during monitoring for GPIIP dock construction between October and November 2017 (Turnagain Marine Construction, 2017). During eight days of monitoring for the Petro Marine dock in January 2017, Steller sea lions were seen on three days (Windward, 2017).

During Straley *et al.*'s (2017) surveys, sea lions typically occurred in groups of two to three; however, a group of more than 100 was sighted on at least one occasion. Steller sea lions in groups of one to eight individuals were observed around Sitka GPIIP dock construction (Turnagain Marine Construction, 2017), while all Steller sea lions were observed individually in Sitka Channel during Petro Marine Dock construction monitoring (Windward, 2017). Observations during the original

construction of the Halibut Point Marine Services dock facility recorded zero Steller sea lions within the 200-meter shutdown zone during pile driving operations. Observers indicated observing individual sea lions outside the 200-meter zone four to five times per week. (McGraw, pers. comm., 2019).

During the summer months, sea lions are seen in the project area daily. Two to three individual sea lions feed on fish carcasses dumped adjacent to the project site from fishing charter operations in a nearby private marina. However, during the proposed project timing of fall and winter, the charter fishing operations are not underway and the sea lions are not as active in the area (McGraw, pers. comm., 2019).

HPMS conservatively estimates, and NMFS preliminarily concurs, that two

groups of eight Steller sea lions (maximum group size observed during the Sitka GPIIP dock construction (Turnagain Marine Construction, 2017)) may occur within the Level B harassment zone on each of the 19 days of in-water construction (8 animals in a group × 2 groups each day × 19 days = 304 Level B harassment takes). Therefore, HPMS requests authorization for 304 Level B harassment takes of Steller sea lions.

The largest Level A harassment zone for otariids extends 28.7m from the source during impact pile driving of 48-inch piles (Table 9). HPMS is planning to implement activity-specific shutdown zones (Table 11), which, given the small size of the Level A harassment zones, are expected to eliminate the potential

for Level A harassment take of Steller sea lion. Therefore, takes of Steller sea lion by Level A harassment have not been requested, and are not proposed to be authorized.

Sea lions from both the Eastern DPS and Western DPS are present in Sitka Sound. According to Hastings *et al.* (in press), 3.1 percent of Steller sea lions in the project area are expected to be from the ESA-listed Western DPS, with the remaining 96.9 percent expected to be from the Eastern DPS. Therefore, of the 304 Level B harassment takes requested, 9 takes are expected to be of Steller sea lions from the ESA-listed Western DPS (western stock) and 295 are expected to be of Steller sea lions from the Eastern DPS (eastern stock).

TABLE 10—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

| Common name | Stock | Level A harassment take | Level B harassment take | Total take | Stock abundance | Percent of stock |
|-------------------------------------|---|-------------------------|-------------------------|------------------|-----------------|------------------|
| Gray Whale | Eastern North Pacific | 0 | 3 | 3 | 26,960 | 0.01 |
| Minke Whale | Alaska | 0 | 3 | 3 | NA | NA |
| Humpback Whale | Central North Pacific | 0 | 152 | ^a 152 | 10,103 | 1.5 |
| Killer Whale | Eastern North Pacific Alaska Resident. | 0 | 24 | ^b 24 | 2,347 | 1.0 |
| | Gulf of Alaska, Aleutian Islands, Bering Sea Transient. | | | | 587 | 4.1 |
| | Eastern North Pacific Northern Resident. | | | | 302 | 7.9 |
| | West Coast Transient. | | | | 243 | 9.9 |
| Harbor Porpoise | Southeast Alaska | 5 | 95 | 100 | 975 | 10.3 |
| Steller Sea Lion ^c | Eastern U.S | 0 | 295 | 295 | 43,201 | 0.7 |
| | Western U.S | | 9 | | 9 |  | 53,624 | 0.02 |
| Harbor Seal | Sitka/Chatham Strait | 5 | 171 | 176 | 13,289 | 1.3 |

^aOf the proposed 152 Level B harassment takes, 143 takes are expected to be of humpback whales from the Hawaii DPS and 9 takes are expected to be of humpbacks from the Mexico DPS.

^bIt is unknown what stock taken individuals may belong to. Therefore, for purposes of calculating the percent of each stock that may be taken, it is assumed that up to 24 takes could occur to individuals of any of the stocks that occur in the project area.

^cEastern U.S. and Western U.S. stocks correspond to the Eastern DPS and Western DPS, respectively.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include

information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, HPMS will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- No in-water construction will take place between March 1 and October 1 to minimize disruption to the Sitka Sound herring spawning and impacts to marine mammals that congregate in Sitka Sound during the herring spawning and summer months to feed on prey.
- For in-water heavy machinery work other than pile driving (e.g., standard barges, etc.), if a marine mammal comes within 10 m, operations shall cease and

vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile);

- HPMS will drive all piles with a vibratory hammer until achieving a desired depth or refusal prior to using an impact hammer;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to HPMS's in-water construction activities.

Additionally, HPMS is required to implement all mitigation measures described in the biological opinion (not yet issued).

Establishment of Shutdown Zones—HPMS will establish shutdown zones

for all pile driving/removal and drilling activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (see Table 11). The largest shutdown zones are generally for low frequency and high frequency cetaceans as shown in Table 11. For low-frequency cetaceans, the shutdown zones contain the entire Level A harassment zones to help prevent Level A harassment takes, as the project area overlaps with humpback and gray whale BIAs as previously discussed.

The placement of PSOs during all pile driving and removal and drilling activities (described in detail in the *Proposed Monitoring and Reporting* section) will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (e.g., fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 11—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL, AND DOWN-THE-HOLE DRILLING

| Activity | Shutdown zone (m) | | | | |
|---|-------------------|--------------|--------------|---------|----------|
| | LF cetaceans | MF cetaceans | HF cetaceans | Phocids | Otariids |
| 30-inch Vibratory Pile Driving/Removal | 50 | 10 | 50 | 25 | 10 |
| 48-inch Vibratory Pile Driving | 50 | 10 | 50 | 25 | 10 |
| Down-the-hole Drilling | 150 | 10 | 100 | 100 | 10 |
| 48-inch Impact Pile Driving (and 30-inch impact pile driving, as necessary) | 750 | 50 | 100 | 100 | 50 |

Monitoring for Level A and Level B Harassment—HPMS will monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling) and Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Placement of PSOs on the shorelines around Sitka Channel allow PSOs to observe marine mammals within the Level A and Level B

harassment zones. Due to the large Level B harassment zones (Table 7), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

Soft Start—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at forty-percent energy, followed by a one-minute waiting period. This procedure would

be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been

observed for 15 minutes if it is a pinniped or small cetacean, or 30 minutes if it is a large cetacean. If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment zone and shutdown zones will commence.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, 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.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as to ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or

environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, dated December 2019. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- HPMS must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of

marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Three PSOs will be employed during all pile driving/removal and drilling activities. PSO locations will provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations are as follows:

- (1) At or near the site of pile driving;
- (2) Big Gavanski Island—During vibratory pile driving and down-the-hole drilling, this PSO will be stationed on the north end of the island, and positioned to view north into Olga Strait and southeast toward the project area. For impact pile driving, this PSO will be stationed on the east side of the island, and positioned to be able to view north into Olga Strait and south toward the project area; and
- (3) Middle Island—During vibratory pile driving and down-the-hole drilling, this PSO will be stationed on the north end of the island and positioned to be able to view west toward Kruzoff Island and east toward the project area. During impact pile driving, this PSO will be stationed on the east side of the island and positioned to view south toward Sitka Channel and east toward the project area.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed or anchor shafts being drilled. Pile driving and drilling activities include the time to install, remove, or drill inside a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than thirty minutes.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal

sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations;
- Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301-427-8401), NMFS and to the Alaska regional stranding coordinator (907-586-7209) as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses apply to all of the species listed in Table 10, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status or impacts on habitat, they are described independently in the analysis below.

Pile driving/removal and drilling activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving/

removal and down-the-hole drilling. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level A or Level B harassment, identified above, when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS and PTS. No mortality or serious injury is anticipated given the nature of the activity. Level A harassment is only anticipated for harbor seal and harbor porpoise. The potential for Level A harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Proposed Mitigation* section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely for pile driving and down-the-hole drilling, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the proposed project may produce sound at distances of many kilometers from the project site, the project site itself is located in an active marine industrial area, as previously described. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats, particularly as the project is expected to occur over just 19 in-water work days, with a maximum of eight hours of work per day, though less on most work days.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor porpoises and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals that experience PTS would likely only receive slight PTS, i.e. minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of

the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Steller sea lion critical habitat has been defined in Southeast Alaska at major haulouts and major rookeries (50 CFR 226.202), however, the action area does not overlap with any Steller sea lion critical habitat. The closest Steller sea lion critical habitat to the project area is Kaiuchali Island, a three-acre rocky islet located slightly less than one mile southwest of Biorka Island. It is listed as "Biorka Island" in the critical habitat descriptions, and is over 25 km (13.5 nmi) southwest of the project area.

Critical habitat was recently proposed for the humpback whale in Southeast Alaska, including Sitka Sound (84 FR 54354, October 9, 2019), but it has not yet been finalized. Additionally, Sitka Sound is within the seasonal southeast Alaska humpback whale feeding BIA from March through November (Ferguson *et al.*, 2015). Construction is expected to occur during the tail end of the season specified for the BIA; however, project activities would only overlap with the BIA for approximately one to two months, and the project is expected to occur over just 19 in-water work days, further reducing the temporal overlap with the BIA. Additionally, the area of the BIA that may be affected by the planned project is small relative to both the overall area of the BIA and the overall area of suitable humpback whale habitat outside of this BIA. Therefore, take of humpback whales using the southeast Alaska humpback whale feeding BIA is not expected to impact reproduction or survivorship.

Sitka Sound is also within a gray whale migratory corridor BIA (Ferguson *et al.*, 2015). Construction is expected to occur during the beginning of the period of highest density in the BIA during the southbound migration (November to January). The Sound is also within the southeast Alaska BIA, an important area for gray whale feeding. Construction is expected to overlap with the end of the period with the highest gray whale densities in the southeast Alaska BIA (May through November). However, as noted for humpback whales, project activities would only overlap with high animal densities in the gray whale migratory and feeding BIAs for approximately one to two months, and the project is expected to occur over just 19 in-water workdays, further reducing the temporal overlap with the BIAs. Additionally, the area of the feeding BIA in which impacts of the planned project may occur is small relative to both the overall area of the BIA and the overall area of suitable gray whale habitat outside of this BIA. The area of Sitka Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Sitka Sound without necessarily being disturbed by the construction. Therefore, take of gray whales using the feeding and migratory BIAs is not expected to impact reproduction or survivorship.

As noted previously, since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. The event has been declared an UME, though a cause has not yet been determined. While three Level B harassment takes of gray whale are proposed to be authorized, this is an extremely small portion of the stock (0.01 percent), and HPMS would be required to implement a shutdown zone that includes the entire Level A harassment zone for low-frequency cetaceans such as gray whales.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- The relatively small number of Level A harassment exposures are anticipated to result only in slight PTS within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior

that would not result in fitness impacts to individuals;

- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species, BIAs, and proposed humpback whale critical habitat; and

- The activity is expected to occur over 19 in-water workdays with a maximum of eight hours of work per day, though less on most days.

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 Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes for each species proposed to be taken as a result of this project is included in Table 10. Our analysis shows that less than 11 percent of each stock could be taken by harassment. Furthermore, these percentages conservatively assume that all takes of killer whale will be accrued to a single stock, when multiple stocks are known to occur in the project area. For the Alaska stock of minke whale, a lack of an accepted stock abundance value did not allow for the calculation of an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales for a portion of the Gulf of Alaska (Zerbini *et al.* 2006). Given three proposed takes by Level B harassment for the stock, comparison to the best estimate of stock abundance shows less than one percent of the stock is expected to be impacted. The number of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each

estimated taking occurred to a new individual, which is an unlikely scenario.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

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.

The proposed Project is in an area where subsistence hunting for harbor seals or sea lions could occur (Wolfe *et al.* 2013). Peak hunting season in southeast Alaska occurs during the month of November and again during March and April. During this time, seals are aggregated in shoal areas as they prey on forage species such as herring, making them easier to find and hunt (Wolfe *et al.* 2013). However, the project location is not preferred for hunting. There is little-to-no hunting documented in the vicinity and there are no harvest quotas for non-listed marine mammals. As such, the Old Sitka Dock North Dolphins Expansion Project is not expected to have impacts on the ability of hunters from southeast Alaska subsistence communities to harvest marine mammals. Additionally, HPMS contacted the Sitka Tribe of Alaska, but they did not raise any concerns regarding subsistence impacts. Therefore, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from HPMS’s proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C.

1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region, Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Mexico DPS humpback whales and Western DPS Steller sea lions, which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Alaska Region for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Halibut Point Marine Services LLC for conducting pile driving and removal and down-the-hole drilling activities in Sitka, AK in fall 2020 to winter 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed project. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this

notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 16, 2020.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2020–01001 Filed 1–21–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA015]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting and hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold public meetings and scoping sessions to discuss management of small-boat pelagic fisheries in Hawaii.

DATES: The Council will hold meetings in Honolulu, Oahu on Tuesday, February 4, 2020, between 6 p.m. and 8 p.m.; in Kona, HI on Wednesday, February 5, 2020, between 6 p.m. and 8 p.m.; in Hilo, HI on Thursday, February 6, 2020, between 6 p.m. and 8 p.m.; in Kahului, Maui on Monday, February 10, 2020, between 6 p.m. and 8 p.m.; in Lihue, Kauai on Tuesday, February 11, 2020, between 6 p.m. and 8 p.m.; and in Kaneohe, Oahu on Thursday, February 13, 2020, between 6 p.m. and 8 p.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Honolulu, Oahu meeting will be held at the Washington Intermediate School Cafeteria, 1633 S King St., Honolulu, HI 96826. The Kona, Hawaii meeting will be held at the West Hawaii Civic Center, Building G, 74–5044 Ane Keohokalole Hwy., Kailua-Kona, HI 96740. The Hilo, Hawaii meeting will be held at Aunt Sally Kaleohano's Luau Hale, 799 Piilani St., Hilo, HI 96720. The Kahului, Maui meeting will be held at the Lihikai Elementary School Cafeteria, 355 S Papa Ave., Kahului, HI 96732. The Kauai meeting will be held at the Chiefess Kamakahahei Middle School Cafeteria, 4431 Nuhou St., Lihue, HI 96766. The Kaneohe, Oahu meeting will be held at the Benjamin Parker Elementary School Cafeteria, 45–259 Waikalua Rd., Kaneohe, HI 96744.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public scoping and comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for All Meetings

1. Welcome and Introductions
2. Public Scoping Session Goals and Objectives
3. Informational Briefing
 - a. Background on the Hawaii Small-boat Pelagic Fishery
 - b. Potential Management Scenarios
 - c. Discussion Questions
4. Public Comment/Scoping Session
5. Report on Next Steps

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–

8226 (fax), at least 5 days prior to the meeting date.

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

Dated: January 16, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2020–00944 Filed 1–21–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX023]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an application submitted by the Cape Cod Commercial Fishermen's Alliance to revise an existing Exempted Fishing Permit contains all of the required information and warrants further consideration. The revised Exempted Fishing Permit would allow two commercial fishing vessels participating in an electronic monitoring program to fish with benthic longline gear in portions of the Cashes Ledge Closure Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before February 6, 2020.

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

- **Email:** NMFS.GAR.EFP@NOAA.gov. Include in the subject line "LONGLINE AMENDMENT TO EM EFP."
- **Mail:** Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "LONGLINE AMENDMENT TO EM EFP."

FOR FURTHER INFORMATION CONTACT: Maria Vasta, Fishery Management Specialist, 978–281–9196.

SUPPLEMENTARY INFORMATION:

On May 1, 2019, NMFS granted an Exempted Fishing Permit (EFP) to the Cape Cod Commercial Fishermen's Alliance, in partnership with The Nature Conservancy, the Maine Coast Fishermen's Association, the Gulf of Maine Research Institute, and fishermen, to continue developing an audit model electronic monitoring (EM) program for catch accounting in the groundfish fishery. Fifteen vessels using a variety of gear types (e.g., jig, benthic longline, sink gillnet, bottom trawl) are participating in the project.

Vessels participating in this EFP are required to use EM on 100 percent of groundfish trips. Camera systems are used in lieu of human at-sea monitors, and in addition to Northeast Fishery Observer Program observers. Vessels must adhere to a vessel-specific monitoring plan detailing at-sea catch handling protocols. Vessels must also submit haul-level electronic vessel trip reports with count and weight estimates for all groundfish discards. To incentivize participation in this program and because vessels are fully accountable, the audit model EM EFP exempts certain participating vessels from several Federal closed area regulations. One of these exemptions allows vessels fishing with jig gear (jigging machines, handgear) to fish in the Cashes Ledge Closure Area, excluding the Ammen Rock Habitat Management Area (HMA).

The Cape Cod Commercial Fishermen's Alliance subsequently submitted a request to revise this EFP to allow two additional vessels to fish with benthic longline gear in portions of the Cashes Ledge Closure Area. Both vessels are currently participating in the audit model EM EFP. The revised EFP would exempt the two participating benthic longline vessels from the Cashes Ledge Closure Area excluding the Ammen Rock HMA at 50 CFR 648.81(a)(3). These vessels would continue to be required to use EM systems on 100 percent of groundfish trips and to adhere to their specific vessel-monitoring plans. Existing catch accounting, video review, and other EM protocols would remain in effect during these operations.

The revised EFP would be effective through the end of fishing year 2019 (April 31, 2019). Project partners estimate that the two participating vessels would collectively take 20 benthic longline trips in the Cashes Ledge Closure Area under the amended EFP. Each trip would last for approximately 18 hours in duration. Cumulative catch estimates from these

benthic longline 20 trips are presented in Table 1.

TABLE 1—CUMULATIVE CATCH ESTIMATES FOR BENTHIC LONGLINE VESSELS FISHING IN THE CASHES LEDGE CLOSURE AREA

| Species | Cumulative catch estimates |
|-------------------------|----------------------------|
| Haddock | 70,000 lb (31,752 kg). |
| Spiny dogfish | 4,000 lb (1,814 kg). |
| Atlantic cod | 2,500 lb (1,134 kg). |
| Cusk | 2,000 lb (907 kg). |
| Atlantic wolffish | 200 lb (91 kg). |
| Winter skate | 200 lb (91 kg). |
| Smooth skate | 200 lb (91 kg). |
| Thorny skate | 200 lb (91 kg). |
| Red hake | 200 lb (91 kg). |
| White hake | 200 lb (91 kg). |
| Sculpin | 200 lb (91 kg). |
| Atlantic halibut | 10 individuals. |
| Winter flounder | 2 individuals. |
| Barndoor skate | 2 individuals. |

Prior to setting benthic longline gear, participating vessels would test their intended fishing area for the presence of target species. Once testing was complete, participating vessels would set an average of 10 lines per trip (five lines per tide, two tides per trip). Each line would be rigged with 1,000 hooks, and average soak time would be approximately 2.5 hours.

Participating vessels would continue to develop EM for catch accounting in the groundfish fishery. The applicant states that allowing benthic longline vessels to fish in portions of the Cashes Ledge Closure Area would give these vessels additional flexibility to extend their fishing season and improve their ability to target haddock, which is a healthy groundfish stock. The applicant additionally states that permitting benthic longline vessels access to portions of the Cashes Ledge Closure Area would provide additional opportunities for hook fishermen to set their gear in areas that are not congested with gillnet and mobile gear.

Since benthic longline fishing inside the Cashes Ledge Closure Area is outside of the scope of the project as described in the original Scientific Research Plan, we are taking public comment on the revision request. Atlantic halibut are caught in the Cashes Ledge Closure Area by vessels fishing with hook gear. We are also interested in comments regarding the potential Atlantic halibut catch, and how the exemption may affect other fixed gear fishing vessels operating in the Cashes Ledge Closure Area.

If approved, the project partners may request minor modifications and extensions to the EFP throughout the

study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: January 15, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020-00887 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XR087]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction at the City Dock and Ferry Terminal, Tenakee Springs, Alaska

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of seven species of marine mammals, by Level B harassment, incidental to construction associated with the city dock and ferry terminal improvement project in Tenakee Springs, Alaska. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from June 1, 2019, through May 31, 2020. ADOT has requested re-issuance with new effective dates of June 1, 2020, through May 31, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from June 1, 2020, through May 31, 2021.

ADDRESSES: An electronic copy of the final 2019 IHA previously issued to ADOT, ADOT's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-city-dock-and-ferry-terminal-construction-tenakee-springs>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (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 authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 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.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

Summary of Request

On June 20, 2018, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Tenakee Springs dock project (83 FR 29749). The effective dates of that IHA were June 1, 2019, through May 31, 2020. On October 14, 2019, ADOT informed NMFS that the project was delayed. None of the work identified in the initial IHA (*e.g.*, pile driving and removal) has occurred. ADOT submitted a request for a new identical IHA that would be effective from June 1, 2020 through May 31, 2021, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of ADOT's construction project is to replace the existing, aging mooring and transfer structures nearing the end of their operational life due to corrosion and wear with modern facilities that provide improved operations for Alaska Marine Highway System (AMHS) ferry vessels, as well as freight and fueling operators, servicing the community of Tenakee Springs. Planned improvements include the installation of new shoreside facilities and marine structures and the renovation of existing structures. The location, timing, and nature of the activities, including the types of equipment planned for use, are the same as those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor seal (*Phoca vitulina*), and Steller sea lion (*Eumetopias jubatus*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was

authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2019 IHA for ADOT's construction work (83 FR 29749), ADOT's application, the **Federal Register** notice of the proposed IHA (83 FR 12152), and all associated references and documents.

Determinations

ADOT will conduct activities as analyzed in the initial 2019 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2020 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in

CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

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 whenever we propose to authorize take for endangered or threatened species.

NMFS' Alaska Regional Office issued a Biological Opinion to NMFS' Office of Protected Resources which concluded the city dock and improvement project is not likely to jeopardize the continued existence of Steller sea lions (western Distinct Population Segment) or humpback whales (Mexico DPS) or adversely modify critical habitat.

Authorization

NMFS has issued an IHA to ADOT for in-water construction activities associated with the specified activity from June 1, 2020, through May 31, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2019 IHA are incorporated.

Dated: January 14, 2020.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2020-00937 Filed 1-21-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XY060]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Central Gulf of Alaska Rockfish Program

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

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes the standard ex-vessel prices and fee percentage for cost recovery under the Central Gulf of Alaska Rockfish Program. This action is intended to provide participants in a rockfish cooperative with the standard prices and fee percentage for the 2019 fishing year, which was authorized from May 1 through November 15. The fee percentage is 3.0 percent. The fee payments are due from each rockfish cooperative on or before February 15, 2020.

DATES: Valid on: January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Carl Greene, 907-586-7105.

SUPPLEMENTARY INFORMATION:

Background

The rockfish fisheries are conducted in Federal waters near Kodiak, AK, by trawl and longline vessels. Regulations implementing the Central Gulf of Alaska (GOA) Rockfish Program (Rockfish Program) are set forth at 50 CFR part 679. Exclusive harvesting privileges are allocated as quota share under the Rockfish Program for rockfish primary and secondary species. Each year, NMFS issues rockfish primary and secondary species cooperative quota (CQ) to rockfish quota shareholders to authorize harvest of these species. The rockfish primary species are northern rockfish, Pacific ocean perch, and dusky rockfish. In 2012, dusky rockfish replaced the pelagic shelf rockfish species group in the GOA Groundfish Harvest Specifications (77 FR 15194, March 14, 2012). The rockfish secondary species include Pacific cod, roughey rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. Rockfish cooperatives began fishing under the Rockfish Program on May 1, 2012.

The Rockfish Program is a limited access privilege program established under the provisions of section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Sections 303A and 304(d) of the Magnuson-Stevens Act require NMFS to collect fees to recover the actual costs directly related to the management, data collection and analysis, and enforcement of any limited access privilege program. Therefore, NMFS is required to collect fees for the Rockfish Program under sections 303A and 304(d)(2) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act also limits the cost recovery fee so that it may not exceed 3 percent of the ex-

vessel value of the fish harvested under the Rockfish Program.

Standard Prices

NMFS calculates cost recovery fees based on standard ex-vessel value prices, rather than actual price data provided by each rockfish CQ holder. Use of standard ex-vessel prices is allowed under sections 303A and 304(d)(2) of the Magnuson-Stevens Act. NMFS generates a standard ex-vessel price for each rockfish primary and secondary species on a monthly basis to determine the average price paid per pound for all shoreside processors receiving rockfish primary and secondary species CQ.

Regulations at § 679.85(b)(2) require the Regional Administrator to publish rockfish standard ex-vessel values during the first quarter of each calendar year. The standard prices are described in U.S. dollars per pound for rockfish primary and secondary species CQ landings made during the previous year.

Fee Percentage

NMFS assesses a fee on the standard ex-vessel value of rockfish primary species and rockfish secondary species CQ harvested by rockfish cooperatives in the Central GOA and waters adjacent to the Central GOA when rockfish primary species caught by a cooperative are deducted from the Federal total allowable catch. The rockfish entry level longline fishery and trawl vessels that opt out of joining a cooperative are not subject to cost recovery fees because those participants do not receive rockfish CQ. Specific details on the Rockfish Program's cost recovery provision may be found in the implementing regulations set forth at § 679.85.

NMFS informs—by letter—each rockfish cooperative of the fee percentage applied to the previous year's landings and the total amount due. Fees are due on or before February 15 of each year. Failure to pay on time will result in the permit holder's rockfish quota share becoming non-transferable, and the person will be ineligible to receive any additional rockfish quota share by transfer. In addition, cooperative members will not receive any rockfish CQ the following year until full payment of the fee is received by NMFS.

NMFS calculates and publishes in the **Federal Register** the fee percentage in the first quarter of each year according to the factors and methods described in Federal regulations at § 679.85(c)(2). NMFS determines the fee percentage that applies to landings made in the previous year by dividing the total

Rockfish Program management, data collection and analysis, and enforcement costs (direct program costs) during the previous year by the total standard ex-vessel value of the rockfish primary species and rockfish secondary species for all rockfish CQ landings made during the previous year (fishery value). NMFS captures the direct program costs through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. Fee collections in any given year may be less than, or greater than, the direct program costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of the calendar year based on the program costs and the fishery value of the previous calendar year.

Using the fee percentage formula described above, the estimated percentage of program costs to value for the 2019 calendar year is 3.08 percent of the standard ex-vessel value; however, the fee percentage amount must not exceed 3.0 percent pursuant section 304(d)(2)(B) of the Magnuson-Stevens Act. Therefore, the 2019 fee percentage is set at 3.0 percent. The fee percentage for 2019 is an increase from the 2018 fee percentage of 2.86 percent (84 FR 1709, February 5, 2019). Although program costs for 2019 decreased over costs accrued in 2018, this was offset by a 7.6 percent decrease in the value of the fishery in 2019, relative to the 2018 fishery value. The majority of the 2019 costs come from direct personnel and overhead costs, which has been consistent across all years of the program.

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2019 ROCKFISH PROGRAM SEASON IN KODIAK, ALASKA

| Species | Period ending | Standard ex-vessel price per pound |
|-------------------------|--------------------|------------------------------------|
| Dusky rockfish* | May 31 | \$0.18 |
| | June 30 | 0.18 |
| | July 31 | 0.18 |
| | August 31 | 0.18 |
| | September 30 | 0.18 |
| | October 31 | 0.18 |
| Northern rockfish | May 31 | 0.17 |
| | June 30 | 0.17 |
| | July 31 | 0.17 |
| | August 31 | 0.17 |
| | September 30 | 0.17 |
| | October 31 | 0.17 |
| Pacific cod | May 31 | 0.46 |
| | June 30 | 0.48 |
| | July 31 | 0.45 |
| | August 31 | 0.45 |
| | September 30 | 0.45 |
| | October 31 | 0.43 |

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2019 ROCKFISH PROGRAM SEASON IN KODIAK, ALASKA—Continued

| Species | Period ending | Standard ex-vessel price per pound |
|-------------------------|-----------------|------------------------------------|
| Pacific ocean perch .. | November 30 | 0.45 |
| | May 31 | 0.20 |
| | June 30 | 0.20 |
| | July 31 | 0.20 |
| | August 31 | 0.20 |
| | September 30 | 0.20 |
| Rougheye rockfish ... | October 31 | 0.20 |
| | November 30 | 0.20 |
| | May 31 | 0.18 |
| | June 30 | 0.20 |
| | July 31 | 0.20 |
| | August 31 | 0.20 |
| Sablefish | September 30 | 0.20 |
| | October 31 | 0.20 |
| | November 30 | 0.20 |
| | May 31 | 1.27 |
| | June 30 | 1.02 |
| | July 31 | 1.21 |
| Shortraker rockfish ... | August 31 | 1.21 |
| | September 30 | 1.21 |
| | October 31 | 1.40 |
| | November 30 | 1.18 |
| | May 31 | 0.22 |
| | June 30 | 0.22 |
| Thornyhead rockfish | July 31 | 0.22 |
| | August 31 | 0.22 |
| | September 30 | 0.22 |
| | October 31 | 0.23 |
| | November 30 | 0.22 |
| | May 31 | 0.57 |
| | June 30 | 0.20 |
| | July 31 | 0.42 |
| | August 31 | 0.42 |
| | September 30 | 0.42 |
| | October 31 | 0.42 |
| | November 30 | 0.42 |

*The pelagic shelf rockfish species group has been changed to "dusky rockfish."

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

Dated: January 16, 2020.

Karyl K. Brewster-Geisz,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–00949 Filed 1–21–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA019]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council’s (Council)

Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel will hold two meetings.

DATES: The meetings will be held on Tuesday, February 4, 2020 and Tuesday February 18, 2020. Both will begin at 3 p.m. and conclude by 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection: <http://mafmc.adobeconnect.com/illex-wg/>.

Telephone instructions are provided upon connecting, or the public can call direct: 800–832–0736, Rm: *7833942#. *Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to gather Advisory Panel input on analysis related to possible changes to the *Illex* squid quota. An agenda and background documents will be posted at the Council’s website (www.mafmc.org) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

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

Dated: January 16, 2020.

Tracey L. Thompson,
Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–00984 Filed 1–21–20; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2020–0002]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial

Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the modification of a Privacy Act System of Records. The information in the system will enable the Bureau to carry out its responsibilities with respect to banks, savings associations, credit unions, and their affiliates and service providers, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions, actions in Federal court, and coordination with other financial regulatory agencies. The Bureau is modifying the system of records in order to update descriptions of the system location; the system manager; the address whereby a member of the public can request access to records, contest records, or request notification whether a system contains a record pertaining to him or her; and the policies and practices for retention and disposal of records.

DATES: Comments must be received no later than February 21, 2020. The modified system of records will be effective January 22, 2020, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>; Follow the instructions for soliciting comments.

• *Email:* privacy@cfpb.gov.

• *Mail/Hand Delivery/Courier:* Tannaz Haddadi, Acting Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435–7058. 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: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, title X, established the CFPB. The CFPB will maintain the records covered by this notice. The modified system of records described in this notice, “CFPB.002—Depository Institution Supervision Database,” will collect information to enable the Bureau to carry out its responsibilities with respect to banks, savings associations, credit unions, and their affiliates and service providers, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions, actions in Federal court, and coordination with other financial regulatory agencies. This modified system of records updates the description of the system location, the address of the system manager, the address whereby members of the public can notify the Bureau to request access to or amend records about themselves, record access, contesting record and notification procedures, and the policies and practices for retention and disposal of records. The updated sections reflect the Bureau’s new address: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, and the updated records schedule. Records in this system will be destroyed 7 years after cutoff. In addition, the Bureau is making non-substantive revisions to the system of records notice to align with the Office of Management and Budget’s recommended model in Circular A-108, appendix II.

The report of a modified system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A-108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” (December 23, 2016),¹ and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled “CFPB.002—Depository Institution Supervision Database” is published in its entirety below.

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111-203, the Bureau is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

SYSTEM NAME AND NUMBER:

CFPB.002—Depository Institution Supervision Database.

SECURITY CLASSIFICATION:

This information system does not contain any classified information or data.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Assistant Director of Large Bank Supervision, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; (202) 435-7923.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203, title X, sections 1011, 1012, 1021, 1025, codified at 12 U.S.C. 5491, 5492, 5511, 5515.

PURPOSE(S) OF THE SYSTEM:

The information in the system is being collected to enable the Bureau to carry out its responsibilities with respect to banks, savings associations, credit unions, and their affiliates and service providers, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions, actions in Federal court, and coordination with other financial regulatory agencies. The information collected in this system will also support the conduct of investigations or be used as evidence by the Bureau or other supervisory or law enforcement agencies. This may result in criminal referrals, referral to the Federal Reserve Office of Inspector General, or the initiation of administrative or Federal court actions. This system will track and store examination and inspection documents created during the performance of the Bureau’s statutory duties. This system also will enable the Bureau to monitor and coordinate regular examinations and required reports, supervisory evaluations and analyses, and enforcement actions internally and with other Federal and State regulators. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are: (1) Individuals who themselves are, and current and former directors, officers, employees, agents, shareholders, and independent contractors of banks, savings associations, or credit unions; (2)

Current and former consumers who are or have been in the past serviced by banks, savings associations, or credit unions subject to the supervision of the Bureau; and (3) Bureau employees assigned to supervise banks, savings associations, or credit unions. Information collected regarding consumer products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain information provided by a supervised institution, by individuals who are or have been serviced by a supervised institution, or other government authorities, to the Bureau in the exercise of Bureau’s responsibilities and used to assess an institution’s compliance with various statutory and regulatory obligations. This may include: (1) Personally identifiable information from customers of banks, savings associations, or credit unions, including without limitation, name, account numbers, address, phone number, email address, and date of birth; (2) contact information of officials of institutions such as members of the Board of Directors, Audit Committee Chair, Chief Executive Officer, Chief Compliance Officer, Internal Auditor, and Independent Auditor including, without limitation, name, address, phone number, and email address; (3) information about Bureau employees assigned to depository institution supervision tasks, including, without limitation, name, phone number, email address, address, and other employment information; and (4) Confidential Supervision Information or Personal Information, including information relating to individuals that is derived from Confidential Supervisory Information or from consumer complaints. This information may include, without limitation, reports of examinations and associated documentation regarding compliance with consumer financial protection laws; documents assessing the current and past safety and soundness/risk management of a covered person or service provider; reports of consumer complaints; and correspondence relating to any category of information discussed above and actions taken to remedy deficiencies in these areas. Information contained in the Depository Institution Supervision Database is collected from a variety of source, including, without limitation: (1) The individuals who own, control, or work

for covered persons or service providers; (2) existing databases maintained by other Federal and state regulatory associations, law enforcement agencies, and related entities; (3) third parties with relevant information about covered persons or service providers; and (4) information generated by Bureau employees or about Bureau employees assigned supervisory tasks. Whenever practicable, the Bureau will collect information about an individual directly from that individual.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from banks, savings associations, credit unions, and their affiliates and service providers, persons subject to the Bureau's authority, and current, former, and prospective consumers who are or have been customers of covered persons, and others with information relevant to the enforcement of Federal consumer financial laws.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an

individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) Any authorized agency or component of the Department of Treasury, the Department of Justice, the Federal Reserve System, the Federal Deposit Insurance Corporation or other law enforcement authorities including disclosure by such authorities: (a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where (i) The United States is a party to or has an interest in the litigation, including where the agency, or an agency component, or an agency official or employee in his or her official capacity, or an individual agency official or employee whom the Department of Justice or the Bureau has agreed to represent, is or may likely become a party, and (ii) the litigation is likely to affect the agency or any component thereof; or (b) To outside experts or consultants when considered appropriate by Bureau staff to assist in the conduct of agency matters;

(8) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(9) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such

record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(10) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(11) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(12) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license; and

(13) An entity or person that is the subject of supervision or enforcement activities including examinations, investigations, administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including without limitation, the individual's name, complaint/inquiry case number, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per DAA-0587-2013-0008, records in this system will be destroyed 7 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable

access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Portions of the records in this system are compiled for law enforcement purposes and are exempt from disclosure under Bureau's Privacy Act regulations and 5 U.S.C. 552a(k)(2). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

HISTORY:

76 FR 45765 (August 01, 2011); 83 FR 23435 (June 21, 2018)

Dated: November 27, 2019.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020-00140 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2020-0004]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a modified Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the modification of a Privacy Act System of Records. The information will enable the Bureau to carry out its responsibilities with respect to enforcement of title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other federal consumer financial law, including: (1) The investigation of potential violations of federal consumer financial law; (2) the pursuit of administrative or civil enforcement actions; and (3) the referral of matters, as appropriate, to the Department of Justice or other Federal or State agencies. The Bureau is modifying the system of records in order to update descriptions of the system location; the system manager; the address whereby a member of the public can request access to records, contest records, or request notification whether a system contains a record pertaining to him or her; and the policies and practices for retention and disposal of records.

DATES: Comments must be received no later than February 21, 2020. The modified system of records will be effective February 21, 2020, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>: Follow the instructions for soliciting comments.

- *Email:* privacy@cfpb.gov.

- *Mail/Hand Delivery/Courier:* Tannaz Haddadi, Acting Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for

public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435-7058. 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: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, title X, established the Bureau. The Bureau will maintain the records covered by this notice. The modified system of records described in this notice, "CFPB.004—Enforcement Database," will collect information to enable the Bureau to carry out its responsibilities with respect to enforcement of title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other Federal consumer financial law, including: (1) The investigation of potential violations of federal consumer financial law; (2) the pursuit of administrative or civil enforcement actions; and (3) the referral of matters, as appropriate, to the Department of Justice or other Federal or State agencies. This modified system of records updates the description of the system location, the address of the system manager, the address whereby members of the public can notify the Bureau to request access to or amend records about themselves, record access, contesting record and notification procedures, and the description of the policies and practices for retention and disposal of records. The updated sections reflect the Bureau's new address: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, and the updated records schedule. Records in this system will be destroyed 15 years after cutoff. In addition, the Bureau is making non-substantive revisions to the system of records notice to align with the Office of Management and Budget's recommended model in Circular A-108, appendix II.

The report of a modified system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the

Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (December 23, 2016),¹ and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled "CFPB.004—Enforcement Database" is published in its entirety below.

SYSTEM NAME AND NUMBER:

CFPB.004—Enforcement Database.

SECURITY CLASSIFICATION:

This information system does not contain any classified information or data.

SYSTEM LOCATION:

Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Assistant Director for Enforcement, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; (202) 435-7493.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203, title X, sections 1011, 1012, 1021 codified at 12 U.S.C. 5491, 5492, 5511.

PURPOSE(S) OF THE SYSTEM:

The information in the system is being collected to enable the Bureau to carry out its responsibilities with respect to enforcement of title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other federal consumer financial law, including: (1) The investigation of potential violations of federal consumer financial law; (2) the pursuit of administrative or civil enforcement actions; and (3) the referral of matters, as appropriate, to the Department of Justice or other Federal or State agencies. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals include:

(1) Individuals who are current or former directors, officers, employees, shareholders, agents, and independent

contractors of covered persons or service providers, who are or have been the subjects of or otherwise associated with an investigation or enforcement action by the Bureau, or have been named in connection with suspicious activity reports or administrative enforcement orders or agreement. Covered persons and service providers include banks, savings associations, credit unions, thrifts, non-depository institutions, or other persons, offering, providing, or assisting with the provision of consumer financial products or services.

(2) Current, former, and prospective consumers who are or have been customers or prospective customers of, solicited by, or serviced by covered persons or service providers if such individuals have provided information, including complaints about covered persons or service providers, or are or have been witnesses in or otherwise associated with an enforcement action by the Bureau.

(3) Applicants, current and former directors, officers, employees, shareholders, agents, and independent contractors of persons and entities that have business relationships with covered persons or service providers who are or have been the subject of an enforcement action by the Bureau.

(4) Current, former, and prospective customers of persons and entities that have business relationships with covered persons or service providers that are or have been the subject of an enforcement action by the Bureau, and the customers are complainants against covered persons or service providers, or witnesses in or otherwise associated with an enforcement action.

(5) Other individuals who have inquired about or may have information relevant to an investigation or proceeding concerning a possible violation of federal consumer financial law. Information collected regarding consumer financial products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and aggregate, non-identifiable information is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system may contain: Identifiable information about individuals such as name, address, email address, phone number, social security number, employment status, age, date of birth, financial information, credit information, and personal history. Records in this system are collected and generated during the

investigation of potential violations and enforcement of laws and regulations under the jurisdiction of the Bureau and may include (1) Records provided to the Bureau about potential or pending investigations, administrative proceedings, and civil litigation; (2) evidentiary materials gathered or prepared by the Bureau or obtained for use in investigations, proceedings, or litigation, and work product derived from or related thereto; (3) staff working papers, memoranda, analyses, databases, and other records and work product relating to possible or actual investigations, proceedings, or litigation; (4) databases, correspondence, and reports tracking the initiation, status, and closing of investigations, proceedings, and litigation; (5) correspondence and materials used by the Bureau to refer criminal and other matters to the appropriate agency or authority, and records reflecting the status of any outstanding referrals; (6) correspondence and materials shared between the Bureau and other Federal and State agencies; (7) consumer complaints made or referred to the Bureau.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from banks, savings association, credit unions, or non-depository institutions or other persons offering or providing consumer financial products or services, current, former, and prospective consumers who are or have been customers or prospective employees and agents of such persons, and current, former, and prospective customers of such entities and persons, and others with information relevant to the enforcement of federal consumer financial laws.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111-203, the Bureau is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) Any authorized agency or component of the Department of Treasury, the Department of Justice, the Federal Reserve System, the Federal Deposit Insurance Corporation or other law enforcement authorities including disclosure by such authorities:

(a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where (i) the United States is a party to or has an interest in the litigation, including where the agency, or an agency component, or an agency official or employee whom the Department of Justice or the Bureau has agreed to represent, is or may likely become a party, and (ii) the litigation is likely to affect the agency or any component thereof; or (b) To outside experts or consultants when considered appropriate by Bureau staff to assist in the conduct of agency matters;

(8) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a

court, adjudicative body, or other administrative body before which the Bureau is authorized to appear, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(9) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(10) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(11) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(12) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license; and

(13) An entity or person that is the subject of supervision or enforcement activities including examinations, investigations administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, without limitation, the individual's name, address, account number, social security number, transaction number, phone number, date of birth, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per NI-587-12-8, records in this system will be destroyed 15 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 45757 (August 01, 2011); 79 FR 6190 (February 3, 2014); 83 FR 23435 (May 21, 2018).

Dated: November 27, 2019.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020-00132 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2020-0001]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the modification of a Privacy Act System of Records. The information in the system enables the Bureau to carry out its responsibilities under the Freedom of Information Act (FOIA) and the Privacy Act (PA), including enabling staff to receive, track, and respond to requests. The Bureau is modifying the system of records in order to update descriptions of the system location; the system manager; the address whereby a member of the public can request access to records, contest records, or request notification whether a system contains a record pertaining to him or her; and the policies and practices for retention and disposal of records.

DATES: Comments must be received no later than February 21, 2020. The modified system of records will be effective January 22, 2020, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>

Follow the instructions for soliciting comments.

- *Email:* privacy@cfpb.gov.
- *Mail/Hand Delivery/Courier:*

Tannaz Haddadi, Acting Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this

notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435-7058. 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: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, title X, established the Bureau. The Bureau will maintain the records covered by this notice. The modified system of records described in this notice, “CFPB.001—Freedom of Information Act/Privacy System,” will collect information to enable the Bureau to carry out its responsibilities under the FOIA and the PA, including enabling staff to receive, track, and respond to requests. This modified system of records updates descriptions of the system location; the system manager; the address whereby a member of the public can request access to records, contest records, or request notification whether a system contains a record pertaining to him or her, and the policies and practices for retention and disposal of records. The updated sections reflect the Bureau’s new address: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, and the updated records schedule. Records in this system will be destroyed two years after supersession by a revision SORN or after the system ceases operation. In addition, the Bureau is making non-substantive revisions to the system of records notice to align with the Office of Management and Budget’s recommended model in Circular A-108, appendix II.

The report of a modified system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget,

pursuant to OMB Circular A-108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” (December 23, 2016),¹ and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled “CFPB.001—Freedom of Information Act/Privacy System” is published in its entirety below.

SYSTEM NAME AND NUMBER:

CFPB.001—Freedom of Information Act/Privacy Act System.

SECURITY CLASSIFICATION:

This information system does not contain any classified information or data.

SYSTEM LOCATION:

Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Chief FOIA Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; (855) 444-3642.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203; title X, sections 1012 and 1013, codified at 12 U.S.C. 5492, 5493.

PURPOSE(S) OF THE SYSTEM:

The information in the system is being collected to enable the Bureau to carry out its responsibilities under FOIA and PA, including enabling staff to receive, track, and respond to requests. This requires maintaining documentation gathered during the consideration and disposition process, administering annual reporting requirements, managing FOIA-related fees and calculations, and delivering responsive records. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are persons who cite FOIA or the PA to request access to records or whose information requests are treated as FOIA requests. Other individuals covered include Bureau staff assigned to process such requests, and employees who may

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111-203, the Bureau is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

have responsive records or are mentioned in such records. FOIA requests are subject to the PA only to the extent that they concern individuals; information pertaining to corporations and other business entities and organizations are not subject to the PA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain: (1) Correspondence with the requester including initial requests and appeals; (2) documents generated or compiled during the search and processing of the request; (3) fee schedules, cost calculations, and assessed cost for disclosed FOIA records; (4) documents and memoranda supporting the decision made in response to the request, referrals, and copies of records provided or withheld; (5) Bureau staff assigned to process, consider, and respond to requests and, where a request has been referred to another agency with equities in a responsive document, information about the individual handling the request on behalf of that agency; (6) information identifying the entity that is subject to the requests or appeals; (7) requester information, including name, address, phone number, email address; FOIA tracking number, phone number, fax number, or some combination thereof; and (8) for access requests under the Privacy Act, identifying information regarding both the party who is making the written request or appeal, and the individual on whose behalf such written requests or appeals are made, including name, Social Security number (SSNs may be submitted with documentation or as proof of identification), address, phone number, email address, FOIA number, phone number, fax number, or some combination thereof. This system also consists of records related to requests for OGIS assistance.

RECORD SOURCE CATEGORIES:

Information in this system covers individuals about whom records are maintained; agency staff assigned to help process, consider and respond to the request, including any appeals; entities filing requests or appeals on behalf of the requestor; other governmental authorities; and entities that are the subjects of the request or appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or

has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The DOJ for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(10) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license; and

(11) National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, but not limited to, the requester's name, the subject matter of request, requestor's organization, FOIA tracking number, and staff member assigned to process the request. Records may also be searched by the address, phone number, fax number, email address of the requesting party, and subject matter of the request, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per DAA-GRS-2016-0003-0002, records will be destroyed two years after

supersession by a revision SORN or after the system ceases operation.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 45768 (August 1, 2011); 78 FR 47306 (August 5, 2013); 79 FR 78837 (December 31, 2014); 83 FR 23435 (May 21, 2018).

Dated: November 27, 2019.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020-00141 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2020-0005]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a Modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the modification of a Privacy Act System of Records. The purpose of the system is to collect and maintain information relating to potential small entity representatives who may or will: (1) Consult with the Bureau and other Small Business Review Panel members and provide advice and recommendations about the potential economic impacts of regulatory proposals under consideration on small entities subject to the proposals; and/or (2) consult with the Bureau about any projected impact on the cost of credit to small entities related to the proposals under consideration and significant alternatives to minimize any such impact while achieving statutory objectives. This modified system of records updates the address of the system manager and the description of the policies and practices for retention and disposal of records.

DATES: Comments must be received no later than February 21, 2020. The modified system of records will be effective January 22, 2020, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>: Follow the instructions for soliciting comments.

- *Email:* privacy@cfpb.gov.

• *Mail/Hand Delivery/Courier:* Tannaz Haddadi, Acting Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on

official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435-7058. 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: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, title X, established the Bureau. The Bureau will maintain the records covered by this notice. The modified system of records described in this notice, "CFPB.017—Small Business Review Panels and Cost of Credit Consultations," will collect and maintain information relating to potential small entity representatives who may or will: (1) Consult with the Bureau and other Small Business Review Panel members and provide advice and recommendations about the potential economic impacts of regulatory proposals under consideration on small entities subject to the proposals; and/or (2) consult with the Bureau about any projected impact on the cost of credit to small entities related to the proposals under consideration and significant alternatives to minimize any such impact while achieving statutory objectives. This modified system of records updates the address of the system manager and the description of the policies and practices for retention and disposal of records. The updated sections reflect the Bureau's new address: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, and the updated records schedule. Records in this system will be destroyed 5 years after cutoff of the calendar year in which the record was created. In addition, the Bureau is making non-substantive revisions to the system of records notice to align with the Office of Management and Budget's recommended model in Circular A-108, appendix II.

The report of a modified system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and

the Office of Management and Budget, pursuant to OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (December 23, 2016),¹ and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled "CFPB.017—Small Business Review Panels and Cost of Credit Consultations" is published in its entirety below.

SYSTEM NAME AND NUMBER:

CFPB.017—Small Business Review Panels and Cost of Credit Consultations.

SECURITY CLASSIFICATION:

This information system does not contain any classified information or data.

SYSTEM LOCATION:

Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Small Business Regulatory Enforcement Fairness Act Manager, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; 202-435-7700.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203, title X, sections 1011 and 1012, codified at 12 U.S.C. 5491 and 5492. Public Law 96-354, as amended by Public Law 104-121 and Public Law 111-203, codified at 5 U.S.C. 601 *et seq.*

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to collect and maintain information relating to potential small entity representatives who may or will: (1) Consult with the Bureau and other Small Business Review Panel members and provide advice and recommendations about the potential economic impacts of regulatory proposals under consideration on small entities subject to the proposals; and/or (2) consult with the Bureau about any projected impact on the cost of credit to small entities related to the proposals under consideration and significant alternatives to minimize any such impact while achieving statutory objectives. The system will also collect and maintain information relating to guests of small entity representatives

who may or will attend such meetings or consultations with the Bureau and other Small Business Review Panel members. The records are used in connection with and for administration of the review panel and cost of credit consultation processes, including meetings or consultations with small entity representatives. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: (1) Individual representatives of small entities who, in their business capacity, may participate in or attend meetings held in connection with the review panel and cost of credit consultation processes or other Bureau related outreach events; and (2) other attendees or individual guests of small entity representatives who may attend meetings held in connection with the review panel and cost of credit consultation processes or other related outreach events; and (3) Bureau employees or other Federal agency employees who participate in the events.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will include information related to small businesses, small organizations, and small governmental jurisdictions, as defined pursuant to the RFA, and individual representatives and guests of these small entities who are invited to or attending meetings or consultations held in connection with the review panel and/or cost of credit consultation processes or other events, or who are otherwise participating in or requesting to participate in such meetings, consultations, or other related events. Such information may include: (1) Contact information (name, title, telephone number, email address); (2) name of employer and memberships or affiliation with trade associations or other organizations; (3) applicable business size standard and North American Industry Classification System (NAICS) code; (4) annual revenues, asset size, and number of employees; (5) scope and nature of business activities; (6) affiliated entities; (7) invitations to and participation in the review panel or cost of credit consultation processes, or other Bureau related outreach event; (8) written comments, correspondence, or other materials submitted in connection with the review panel and/or cost of credit consultation processes; and (9)

information necessary to obtain entry into a Bureau or other government facility (address, telephone number, date of birth, Social Security number, country of citizenship). Information maintained on individual guests of small entity representatives who may attend meetings held in connection with the review panel and/or cost of credit consultation processes or other Bureau related outreach events will include: (1) Contact information (name, title, telephone number, email address); (2) employer or sponsor name; (3) information on membership in or affiliation with trade associations or other organizations; (4) invitations to and participation or requested participation in the review panel and/or cost of credit consultation processes, or other Bureau related outreach event; and (5) information necessary to obtain entry into a Bureau or other government facility (address, telephone number, date of birth, Social Security number, country of citizenship).

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual who is the subject of these records, and/or the association or organization providing the information on behalf of one of its members, or individual guests of small entity representatives, and the Bureau staff involved in the Small Business and Cost of Consultation Panel meetings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111-203, the Bureau is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body before which the Bureau is authorized to appear, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) The public in the form of a list of the individual and business names of the invited or selected participants;

(10) Other representatives of small entities who have been invited or selected to participate in the review panel and/or cost of credit consultation processes and related meetings or other events, and persons attending such meetings, consultations, or other related events;

(11) The Office of Advocacy of the Small Business Administration, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and any of their employees in their official capacity; and

(12) Appropriate Federal organizations or agencies in connection with a joint or interagency rulemaking process or consultation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by one or more of the following: The name of the individual, business or employer name; membership or affiliation with trade associations or other organizations; applicable business size standard and NAICS code; affiliated entities; scope or nature of business activities.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per N1-587-12-9, records in this system will be destroyed 5 years after cutoff of the calendar year in which the record was created.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of

records may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

77 FR 24183 (April 23, 2012); 83 FR 23435 (June 21, 2018).

Dated: November 27, 2019.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020-00131 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2020-0003]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the modification of a Privacy Act System of Records. The information in the system will enable the Bureau to carry out its responsibilities with respect to non-depository covered persons and service providers, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions, actions in Federal court, and coordination with other financial regulatory agencies. The Bureau is modifying the system of records in order to update descriptions

of the system location; the system manager; the address whereby a member of the public can request access to records, contest records, or request notification whether a system contains a record pertaining to him or her; and the policies and practices for retention and disposal of records.

DATES: Comments must be received no later than February 21, 2020. The modified system of records will be effective January 22, 2020, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>

Follow the instructions for soliciting comments.

- *Email:* privacy@cfpb.gov.
- *Mail/Hand Delivery/Courier:*

Tannaz Haddadi, Acting Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435-7058. 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: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, title X, established the Bureau. The Bureau will maintain the records covered by this notice. The modified system of records described in this notice, “CFPB.003—Non-depository Supervision Database,” will collect information to enable the Bureau to carry out its responsibilities with respect to non-depository covered persons and service providers, including the coordination and conduct of examinations, supervisory

evaluations and analyses, enforcement actions, actions in Federal court, and coordination with other financial regulatory agencies. This modified system of records updates the description of the system location, the address of the system manager, the address whereby members of the public can notify the Bureau to request access to or amend records about themselves, record access, contesting record and notification procedures, and the policies and practices for retention and disposal of records. The updated sections reflect the Bureau’s new address: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, and the updated records schedule. Records in this system will be destroyed 7 years after cutoff. In addition, the Bureau is making non-substantive revisions to the system of records notice to align with the Office of Management and Budget’s recommended model in Circular A-108, appendix II.

The report of a modified system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A-108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” (December 23, 2016),¹ and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled “CFPB.003—Non-depository Supervision Database” is published in its entirety below.

SYSTEM NAME AND NUMBER:

CFPB.003—Non-depository Supervision Database.

SECURITY CLASSIFICATION:

This information system does not contain any classified information or data.

SYSTEM LOCATION:

Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Assistant Director of Nonbank Supervision, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; (202) 435-7923.

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111-203, the Bureau is not required to comply with OMB-issued guidance; it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203, title X, sections 1011, 1012, 1021, 1024, codified at 12 U.S.C. 5491, 5492, 5511, 5514.

PURPOSE(S) OF THE SYSTEM:

The information in the system is being collected to enable the Bureau to carry out its responsibilities with respect to non-depository covered persons and service providers, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions, actions in Federal court, and coordination with other financial regulatory agencies. The information collected in this system will also support the conduct of investigations or be used as evidence by the Bureau or other supervisory or law enforcement agencies. This may result in criminal referrals, referral to the Federal Reserve Office of Inspector General, or the initiation of administrative or Federal court actions. This system will track and store examination and inspection documents created during the performance of the Bureau’s statutory duties. This system also will enable the Bureau to monitor and coordinate regular examinations and required reports, supervisory evaluations and analyses, and enforcement actions internally and with other Federal and state regulators. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are: (1) Individuals who themselves are current and former directors, officers, employees, agents, shareholders, and independent contractors of non-depository covered persons subject to the supervision of the Bureau; (2) Current and former consumers who are or have been in the past serviced by non-depository covered persons subject to the supervision of the Bureau; and (3) Bureau employees assigned to supervise non-depository covered persons. Information collected regarding consumer products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may contain information provided by a covered person, by individuals who are or have been serviced by a covered person, or other governmental authorities, to the

Bureau in the exercise of the Bureau's responsibilities and used to assess a covered person's compliance with various statutory and regulatory obligations. This information may include, without limitation, reports of examinations and associated documentation regarding compliance with consumer financial law; documents assessing the current and past safety and soundness/risk management of a covered person or service provider; reports of consumer complaints; and correspondence relating to any category of information discussed above and actions taken to remedy deficiencies in these areas. Information contained in the Non-depository Supervision Database is collected from a variety of sources, including, without limitation: (1) The individuals who own, control, or work for covered persons or service providers; (2) existing databases maintained by other Federal and State regulatory associations, law enforcement agencies, and related entities; (3) third-parties with relevant information about covered persons or service providers; and (4) information generated by Bureau employees. Whenever practicable, the Bureau will collect information about an individual directly from that individual.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from covered persons subject to the Bureau's authority, and current, former, and prospective consumers who are or have been customers or prospective customers of covered persons, and others with information relevant to the enforcement of Federal consumer financial laws.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) Any authorized agency or component of the Department of Treasury, the Department of Justice, the Federal Reserve System, the Federal Deposit Insurance Corporation or other law enforcement authorities including disclosure by such authorities: (a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where (i) The United States is a party to or has an interest in the litigation, including where the agency, or an agency component, or an agency official or employee in his or her official capacity, or an individual agency official or employee whom the Department of Justice or the Bureau has agreed to represent, is or may likely become a party, and (ii) the litigation is likely to affect the agency or any component thereof; or (b) To outside experts or consultants when considered appropriate by Bureau staff to assist in the conduct of agency matters;

(8) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other

administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(9) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(10) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(11) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(12) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license; and

(13) An entity or person that is the subject of supervision or enforcement activities including examinations, investigations, administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, but not limited to, the individual's name, complaint/inquiry case number, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per DAA-0587-2013-0008, records in this system will be destroyed 7 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Portions of the records in this system are compiled for law enforcement purposes and are exempt from disclosure under Bureau's Privacy Act regulations and 5 U.S.C. 552a(k)(2). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

HISTORY:

76 FR 45761 (August 01, 2011); 83 FR 23435 (May 21, 2018).

Dated: November 27, 2019.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020-00139 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2020-0006]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the modification of a Privacy Act System of Records. The information in the system will enable the Bureau to identify and conduct effective financial education programs and to collect, research, and publish certain information relevant to understanding and improving consumer financial decision-making and well-being. The Bureau is modifying the system of records in order to update descriptions of the system location; the system manager; and the policies and practices for retention and disposal of records.

DATES: Comments must be received no later than February 21, 2020. The modified system of records will be effective January 22, 2020, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

- **Electronic:** <http://www.regulations.gov>: Follow the instructions for soliciting comments.

- **Email:** privacy@cfpb.gov.
- **Mail/Hand Delivery/Courier:**

Tannaz Haddadi, Acting Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435-7058. 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: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, title X, established the Bureau. The Bureau will maintain the records covered by this notice. The modified system of records described in this notice, "CFPB.021—Consumer Education and Engagement Records," will collect information to enable the Bureau to identify and conduct effective financial education programs and also to collect, research, and publish certain information relevant to understanding and improving consumer financial decision-making and well-being. This modified system of records updates the description of the system location, the address of the system manager, the address whereby members of the public can notify the Bureau to request access to or amend records about themselves, and record access, contesting record and notification procedures. The updated sections reflect the Bureau's new address: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, and the updated records schedule. Records in this system will be destroyed in accordance with the related item number within the Consumer Education and Engagement Records schedule. In addition, the Bureau is making non-substantive revisions to the system of records notice to align with the Office of Management

and Budget's recommended model in Circular A-108, appendix II.

The report of a modified system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (December 23, 2016),¹ and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled "CFPB.021—Consumer Education and Engagement Records" is published in its entirety below.

SYSTEM NAME AND NUMBER:

CFPB.021—Consumer Education and Engagement Records.

SECURITY CLASSIFICATION:

This information system does not contain any classified information or data.

SYSTEM LOCATION:

Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Associate Director, Consumer Education and Engagement, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; (202) 257-9388.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203, title X, sections 1013 and 1022, codified at 12 U.S.C. 5493 and 5512.

PURPOSE(S) OF THE SYSTEM:

The Act established functions within the Bureau (1) to develop and implement initiatives to educate and empower consumers to make better informed financial decisions; (2) to develop and implement a strategy to improve the financial literacy of consumers, including access to financial information, products and services; (3) to do research regarding, among other things, (a) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services, (b) consumer awareness and understanding of and decision-making

relevant to costs, risks, and benefits of consumer financial products or services, (c) consumer behavior with respect to consumer financial products and services, (d) experiences of traditionally underserved consumers, including unbanked and under-banked consumers, and (e) best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management. Consistent with these functions, the purpose of the system is to enable the Bureau to identify and conduct effective financial education programs and also to collect, research, and publish certain information relevant to understanding and improving consumer financial decision-making and well-being. Although this SORN describes the information to be collected across many Bureau projects, for each project the Bureau will collect only the information needed to accomplish the specific purpose of that project. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who: Participate in Bureau-sponsored or Bureau-funded financial education or financial capability programs, including financial education campaigns; utilize financial education web-tools or other financial education resources; or participate in surveys or other research conducted by the Bureau or by a third party, or by a third party on behalf of the Bureau.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system regarding the individuals described above may include: (1) Contact information (name, phone numbers, email address); (2) unique identifiers provided to government employees; (3) information related to the participant's financial status including bank account information, records of consumer financial transactions, and credit report data; (4) information on consumer characteristics collected in connection with financial education programs or the consumer's business relationship with a third party; (5) bank account information (for payment to survey participants); (6) other information collected from or about consumers in response to surveys or other research methods; (7) information relating to the effectiveness of financial education programs or resources or access to financial products or services; (8) Social Security number(s), when needed to

pull credit reports or otherwise connect data points across data sources to understand consumer financial decision-making and well-being and the effectiveness of financial education or financial capability programs, resources, tools, or interventions; (9) biographic information (e.g. race, ethnicity, date of birth, marital status, education level, household composition information, citizenship status, disability information, veteran status) in order to understand the effectiveness of financial education or financial capability programs, resources, tools, or interventions, as it relates to specific populations; and (10) web analytics information that may be partially identifiable, including records of access to Bureau managed websites or resources including date(s) and time(s) of access, IP address of access, logs of internet activity related to use of the site or resource, the address that linked the user directly to the site or resource, in order to understand and enhance the effectiveness or usability of the site or resource.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual who is the subject of these records, and/or from third parties, including depository or non-depository institutions, credit reporting agencies, counseling agencies or other businesses or organizations or governmental entities involved in the markets for consumer financial products or services or that provide financial education services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau Disclosure of Records and Information Rules, promulgated at 12 CFR 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111-203, the Bureau is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(10) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license; and

(11) Appropriate Federal, State, local, foreign, tribal or self-regulatory organizations or agencies or private entities that partner with the Bureau for research purposes.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by unique identifiers assigned to the records for purposes of longitudinal updating or for connecting data points across data sources, or by a variety of fields including, without limitation, the individual's name and contact information, identifying file number, or other information collected in response to surveys or other research.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per DAA-0587-2014-0006, the records in this system will be destroyed in accordance with the related item number within the Consumer Education and Engagement Records schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy

Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions appearing in the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

77 FR 60382 (October 3, 2012); 79 FR 78839 (December 21, 2014); 83 FR 23435 (June 21, 2018).

Dated: November 27, 2019.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020-00130 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) took place.

DATES: Closed to the public Tuesday, January 14, 2020 from 8:00 a.m. to 5:00

p.m. and Wednesday, January 15, 2020 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center at 4075 Wilson Blvd., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, (703) 571-0081 (Voice), (703) 697-1860 (Facsimile), kevin.a.doxey.civ@mail.mil (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140. Website: <http://www.acq.osd.mil/dsb/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense, the Defense Science Board was unable to provide public notification required by 41 CFR 102-3.150(a) concerning its scheduled meeting of January 14, 2020 through January 15, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB members will meet to discuss classified future dimensions of conflict that might be exploited by our near-peer competitors and adversaries in response to the DSB's 2020 Summer Study on New Dimensions of Conflict tasking. **Agenda:** The DSB meeting will begin on January 14, 2020 at 8:00 a.m. with opening remarks by Mr. Kevin Doxey, the Designated Federal Officer (DFO), and Dr. Craig Fields, DSB Chairman. The members of the study will meet to discuss classified future dimensions of conflict that might be exploited by our near-peer competitors and adversaries. Following break, the members will resume their meeting. The meeting will adjourn at 5:00 p.m. On January 15, 2020 the meeting will begin at 8:00 a.m. with a discussion of classified future dimensions of conflict that might be exploited by our near-peer competitors and adversaries. Following break, the

members will resume their meeting. The meeting will adjourn at 4:00 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102-3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102-3.105(j) and 102-3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: January 15, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020-00916 Filed 1-21-20; 8:45 am]

BILLING CODE 5001-06-P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., January 24, 2020.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at www.dnfsb.gov. Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Tara Tadlock, Manager of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004-2901, (800) 788-4016. This is a toll-free number.

Dated: January 16, 2020.

Bruce Hamilton,
Chairman.

[FR Doc. 2020-01061 Filed 1-17-20; 11:15 am]

BILLING CODE 3670-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20-711-001.

Applicants: Cambria Wind, LLC.

Description: Tariff Amendment: Amendment to MBR Application to be effective 1/31/2020.

Filed Date: 1/15/20.

Accession Number: 20200115-5107.

Comments Due: 5 p.m. ET 1/22/20.

Docket Numbers: ER20-793-000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits (3) ECSAs, Service Agreement Nos. 5390, 5506, 5516 to be effective 3/14/2020.

Filed Date: 1/14/20.

Accession Number: 20200114–5153.

Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–794–000.

Applicants: Midcontinent

Independent System Operator, Inc, Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2020–01–15_SA 3403 OTP–NSP FSA (J460) CapX Brookings to be effective 3/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5058.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–795–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amended SGIA Buck Wind Park Project WDT685 SA No. 523 to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5067.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–796–000.

Applicants: Adelanto Solar, LLC.

Description: § 205(d) Rate Filing: Adelanto Solar, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5081.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–797–000.

Applicants: Adelanto Solar II, LLC.

Description: § 205(d) Rate Filing: Adelanto Solar II, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5084.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–798–000.

Applicants: Blythe Solar 110, LLC.

Description: § 205(d) Rate Filing: Blythe Solar 110, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5085.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–799–000.

Applicants: Blythe Solar II, LLC.

Description: § 205(d) Rate Filing: Blythe Solar II, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5086.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–800–000.

Applicants: Casa Mesa Wind, LLC.

Description: § 205(d) Rate Filing: Casa Mesa Wind, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5087.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–801–000.

Applicants: Golden Hills

Interconnection, LLC.

Description: § 205(d) Rate Filing:

Golden Hills Interconnection, LLC

Amendment to MBR Tariff to be

effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5088.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–802–000.

Applicants: Golden Hills North Wind, LLC.

Description: § 205(d) Rate Filing:

Golden Hills North Wind, LLC

Amendment to MBR Tariff to be

effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5089.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–803–000.

Applicants: Golden Hills Wind, LLC.

Description: § 205(d) Rate Filing: Golden Hills Wind, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5090.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–804–000.

Applicants: Luz Solar Partners Ltd., V.

Description: § 205(d) Rate Filing: Luz

Solar Partners Ltd., V Amendment to

MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5091.

Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–805–000.

Applicants: McCoy Solar, LLC.

Description: § 205(d) Rate Filing: McCoy Solar, LLC Amendment to MBR Tariff to be effective 1/16/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5093.

Comments Due: 5 p.m. ET 2/5/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00955 Filed 1–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM19–12–000]

Revisions to the Filing Process for Commission Forms; Notice of Extension of Time and Rescheduling of Technical Conference

On December 16, 2019, a notice was issued announcing a staff-led technical conference to be held from February 4 through February 6, 2020, to discuss the draft FERC XBRL Taxonomy and filing processes for implementing the XBRL data standard, pursuant to Order No. 859.¹ The notice also established a comment period, until January 17, 2020, for parties to comment on the draft FERC XBRL Taxonomy using the Yeti review tool or file written comments on issues related to the draft taxonomy or related draft implementation documents.

On December 20, 2019, the American Public Power Association, the American Gas Association, the Edison Electric Institute, and the National Rural Electric Cooperative Association (collectively, the Joint Associations) filed a motion requesting a 60-day extension of time to submit comments. Joint Associations state that an extension of time is necessary to prepare comments that will meaningfully inform Commission staff's development of a revised draft FERC XBRL taxonomy because part of the comment period includes the federal holidays, many of the employees who would prepare the comments will be preparing Securities and Exchange Commission filings due in February, and some of the information on which the Commission seeks comment will not have been made available for an adequate time to review.

Upon consideration, notice is hereby given that the date for comments on the draft FERC XBRL Taxonomy or related draft documents in the above-captioned proceeding is extended by 45 days, up to and including March 2, 2020.

The date for the technical conference in this proceeding also is rescheduled to March 24 through March 26, 2020.

¹ *Revisions to the Filing Process for Commission Forms*, 167 FERC 61,241 (2019).

Dated: January 13, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-00965 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20-36-000]

Rover Pipeline LLC; Notice of Application

Take notice that on January 9, 2020, Rover Pipeline LLC (Rover), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to increase the certificated mainline capacity on its pipeline system by 175 million cubic feet per day. Rover asserts that the proposed increase in certificated capacity to 3.425 billion cubic feet per day is supported by analysis of actual pipeline operating flow and pressure conditions. Rover states that there will be no construction or modifications to its existing facilities or services as part of this proposal, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Blair Lichtenwalter, Senior Director, Regulatory Affairs, Rover Pipeline LLC, 1300 Main Street, Houston, Texas 77002, at (713) 989-2605.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters

will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16-4-001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.¹ Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to "show good cause why the time limitation should be waived," and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.²

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on February 3, 2020.

Dated: January 13, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-00967 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7253-016]

Ampersand Sebec Lake Hydro, LLC; Dichotomy Sebec Lake Hydro, LLC; Notice of Transfer of Exemption

1. On January 2, 2020, Ampersand Sebec Lake Hydro, LLC exemptee for the Sebec Hydroelectric Project No. 7253, filed a letter notifying the Commission that the project was transferred from Ampersand Sebec Lake Hydro, LLC to Dichotomy Sebec Lake Hydro, LLC. The exemption from licensing was originally issued on September 26, 1983.¹ The project is located on Sebec River in Pistaquis County, Maine. The transfer of

¹ *Tennessee Gas Pipeline Company, L.L.C.*, 162 FERC 61,167 at 50 (2018).

² 18 CFR 385.214(d)(1).

¹ *Sebec Hydro Company*, 24 FERC 62,364 (1983). The project was transferred to Ampersand Sebec Lake Hydro, LLC on November 30, 2007.

an exemption does not require Commission approval.

2. Dichotomy Sebec Lake Hydro, LLC is now the exemptee of the Sebec Hydroelectric Project No. 7253. All correspondence must be forwarded to: Mr. Ian Clark, Dichotomy Sebec Lake Hydro, LLC, 65 Ellen Ave, Mahopac, NY 10541, Email: ianc@dichotomycapital.com.

Dated: January 13, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-00963 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI20-2-000]

Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene; Williams Fork East, LLC

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI20-2-000.

c. *Date Filed:* December 5, 2019.

d. *Applicant:* Williams Fork East, LLC.

e. *Name of Project:* WFE Hydroelectric Project.

f. *Location:* The proposed WFE Hydro Project would be located on the Egly Mesa Ditch, a tributary of the East Fork Williams Fork River, near the town of Meeker, in Rio Blanco County, Colorado.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2018).

h. *Applicant Contact:* Williams Fork East, LLC; Agent Contact: Lisa or Albert Bennett; Wild Skies, Inc.; telephone: (970) 926-0216; email: lisa@wildskies.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502-6437, or email: Jennifer.Polardino@ferc.gov.

j. *Deadline for filing comments, protests, and motions to intervene is:* 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit

brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number DI20-2-000.

k. *Description of Project:* The proposed WFE Hydroelectric Project would consist of: (1) A gated diversion structure on the Egly Mesa Ditch, a tributary of the East Fork Williams Fork River; (2) a flow measuring device; (3) a pipeline; (4) a powerhouse containing a single turbine-generator unit with an installed capacity of 12 kilowatts; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above and in the Commission's Public Reference Room located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title COMMENTS, PROTESTS, and MOTIONS TO INTERVENE, as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-00958 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL20-18-000, QF20-184-001, QF20-185-001, QF20-186-001, QF20-187-001, QF20-188-001, QF20-189-001, QF20-190-001, QF20-191-001, QF20-192-001, QF20-193-001, QF20-194-001, QF20-195-001, QF20-196-001, QF20-197-001, QF20-198-001, QF20-199-001, QF20-200-001]

Curry Solar Farm, LLC; Notice of Petition for Declaratory Order

Take notice that on January 9, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Curry Solar

Farm, LLC (Petitioners),¹ filed a petition for a declaratory order seeking limited waiver of the filing requirements applicable to small power production facilities set forth in section 292.203(a)(3) of the Commission's regulations, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern time on February 10, 2020.

¹ Petitioners include: Curry Solar Farm, LLC, Docket No. QF20-184-001; Curry Solar Farm, LLC, Docket No. QF20-185-001; Curry Solar Farm, LLC, Docket No. QF20-186-001; Curry Solar Farm, LLC, Docket No. QF20-187-001; Curry Solar Farm, LLC, Docket No. QF20-188-001; Curry Solar Farm, LLC, Docket No. QF20-189-001; Curry Solar Farm, LLC, Docket No. QF20-190-001; Curry Solar Farm, LLC, Docket No. QF20-191-001; Curry Solar Farm, LLC, Docket No. QF20-192-001; Curry Solar Farm, LLC, Docket No. QF20-193-001; Curry Solar Farm, LLC, Docket No. QF20-194-001; Curry Solar Farm, LLC, Docket No. QF20-195-001; Curry Solar Farm, LLC, Docket No. QF20-196-001; Curry Solar Farm, LLC, Docket No. QF20-197-001; Curry Solar Farm, LLC, Docket No. QF20-198-001; Curry Solar Farm, LLC, Docket No. QF20-199-001; Curry Solar Farm, LLC, Docket No. QF20-200-001.

Dated: January 14, 2020.
Kimberly D. Bose,
Secretary.
 [FR Doc. 2020-00920 Filed 1-21-20; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3452-017]

Erie Boulevard Hydropower, L.P.; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3452-017.

c. *Date Filed:* June 28, 2019.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oak Orchard Hydroelectric Project.

f. *Location:* The project is located adjacent to the New York State Canal Corporation's barge canal in the Village of Medina, Orleans County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r)

h. *Applicant Contact:* Mr. Steven P. Murphy, Director, U.S. Licensing, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, NY 13069; (315) 598-6130; email—steven.murphy@brookfieldrenewable.com

i. *FERC Contact:* Laurie Bauer at (202) 502-6519; or email at laurie.bauer@ferc.gov

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The first page of any filing should include docket number P-3452-017.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The Oak Orchard Project consists of the following existing facilities: (1) A concrete gravity dam containing a spillway with a crest elevation of 507.6 feet mean sea level (msl) surmounted by 2-foot-high flashboards and two 5-foot-high, 5-foot-wide flood gates; (2) a forebay with a surface area of 0.25 acre and a storage capacity of 3 acre-feet at the normal pool elevation of 509.6 feet msl; (3) an intake structure with trashracks; (4) a 7-foot-diameter, 85-foot-long welded steel penstock from the intake to the turbine; (5) a 20-foot-long, 43-foot-wide powerhouse containing a single turbine-generator unit with a rated capacity of 350 kilowatts; (6) a tailrace located on the left (west) bank of Oak Orchard Creek; (7) a 55-foot-long underground generation lead; (8) three single-phase 167-kilovolt-ampere pole-mounted power transformers; (9) a 400-foot-long access road; and (10) appurtenant facilities.

Erie operates the project off of flows provided to it from the barge canal. During the navigation season, the Canal Corporation provides approximately 225 cubic feet per second (cfs) of water. Under normal operating conditions, Erie uses approximately 200 cfs of the provided water for project operation and the remaining water (approximately 25 cfs) is discharged directly to Oak Orchard Creek. During the period from 2009 to 2016, the average annual generation was approximately 1,147 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via

email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process

The Commission intends to prepare an environmental assessment (EA) for the Oak Orchard Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document 1 (SD1) issued January 14, 2020.

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1-866-208-3676 or for TTY, (202) 502-8659.

Dated: January 14, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-00922 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11834-072]

Brookfield White Pine Hydro, LLC; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding*: Application for temporary variance of reservoir elevation.

b. *Project No.*: 11834-072.

c. *Date Filed*: January 6, 2020.

d. *Licensee*: Brookfield White Pine Hydro, LLC.

e. *Name of Project*: Upper and Middle Dams Storage Project.

f. *Location*: The project is located on the Rapid River in Oxford and Franklin counties, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Licensee Contact*: Mr. Kyle Murphy, Brookfield Renewable, 150

Main Street, Lewiston, ME, (207) 458-5861, Kyle.murphy@brookfieldrenewable.com.

i. *FERC Contact*: Ms. Rebecca Martin, (202) 502-6012, Rebecca.martin@ferc.gov.

j. Deadline for filing comments, interventions, and protests is February 13, 2020. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-11834-072.

k. *Description of Request*: The applicant requests a temporary variance from article 402 of its license to operate the reservoir elevation below its normal winter minimum elevation of 1437 feet mean sea level (msl), to allow for structural repairs to the Middle Dam. The licensee would maintain a minimum elevation of 1436.0 feet msl from March 1 through April 15 beginning in 2020 and during the same time period through 2024. The drawdown would allow for the repairs to be completed in the dry and during the reduced recreation season. The licensee would hold back additional water at the Upper Dam Development, located upstream of the Middle Dam, during the construction years to assist in the refill of the Middle Dam Reservoir, Richardson Lake.

l. This filing may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888

First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 14, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-00923 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2894-013]

Flambeau Hydro, LLC; Notice of Meeting To Discuss the Black Brook Hydroelectric Project No. 2894 Supporting Design Report

a. *Date and Time of Meeting*: January 30, 2020 at 10 a.m. EST.

b. *Place*: Teleconference at FERC Headquarters, 888 First St NE, Washington, DC 20426.

c. *FERC Contact:* Michael Davis; Phone Number: 202-502-8339 or email at michael.davis@ferc.gov.

d. *Purpose of Meeting:* The purpose of this meeting is to discuss the Supporting Design Report (SDR) for the proposed relicensing of the Black Brook Hydroelectric Project.

e. *Proposed Agenda:*

- (1) Discuss Expected Content of SDR
- (2) Discuss Expected Timeline for SDR Submission
- (3) Address Questions by Licensee
- f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Michael Davis at (202) 502-8339 by January 28, 2020, to RSVP and to receive specific instructions on how to participate.
- g. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to accessibility@ferc.gov or call toll free

(866) 208-3372 (voice) or 202-208-8659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

Dated: January 15, 2020.
Nathaniel J. Davis, Sr.,
Deputy Secretary.
 [FR Doc. 2020-00962 Filed 1-21-20; 8:45 am]
BILLING CODE 6717-01-P

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

**Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502-8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502-8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at <http://ferc.capitolconnection.org/> using the eLibrary link, or may be examined in the Commission's Public Reference Room.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission
TIME AND DATE: January 23, 2020, 10:00 a.m.

1063RD—MEETING

[Open Meeting; January 23, 2020; 10:00 a.m.]

| Item No. | Docket No. | Company |
|-----------------------|--|---|
| ADMINISTRATIVE | | |
| A-1 | AD20-1-000 | Agency Administrative Matters |
| A-2 | AD20-2-000 | Customer Matters, Reliability, Security and Market Operations. |
| ELECTRIC | | |
| E-1 | OMITTED. | |
| E-2 | OMITTED. | |
| E-3 | OMITTED. | |
| E-4 | ER19-2722-000 | PJM Interconnection, L.L.C. |
| E-5 | EL19-47-000 | <i>Independent Market Monitor for PJM Interconnection, L.L.C. v. PJM Interconnection, L.L.C.</i> |
| | EL19-63-000 | Office of the People's Counsel for the District of Columbia, Delaware Division of the Public Advocate, Citizens Utility Board, Indiana Office of Utility Consumer Counselor, Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, West Virginia Consumer Advocate Division, and <i>PJM Industrial Customer Coalition v. PJM Interconnection, L.L.C.</i> |
| E-6 | OMITTED. | |
| E-7 | OMITTED. | |
| E-8 | OMITTED. | |
| E-9 | OMITTED. | |
| E-10 | ER19-1938-000, ER19-1938-001 | Florida Power & Light Company. |
| E-11 | ER19-1940-001 | Gulf Power Company. |
| E-12 | ER19-1890-000 | MATL LLP. |
| E-13 | ER19-1943-000, ER19-1943-001 | NorthWestern Corporation. |
| E-14 | ER19-1946-000 | Dominion Energy South Carolina, Inc. |
| E-15 | ER19-1954-000 | Southwest Power Pool, Inc. |
| E-16 | ER19-1934-002 | Tucson Electric Power Company. |
| E-17 | ER19-1935-001 | UNS Electric, Inc. |
| E-18 | ER19-2276-000, ER19-2276-001, ER19-2276-002. | New York Independent System Operator, Inc. |
| E-19 | EL18-188-000 | <i>NRG Curtailment Solutions, Inc. v. New York Independent System Operator, Inc.</i> |
| E-20 | RR19-7-000 | North American Electric Reliability Corporation. |
| E-21 | RM19-10-000 | Transmission Planning Reliability Standard TPL-001-5. |
| E-22 | RM18-20-000 | Critical Infrastructure Protection Reliability Standard CIP-012-1—Cyber Security—Communications between Control Centers. |
| E-23 | RM05-5-025, RM05-5-026, RM05-5-027. | Standards for Business Practices and Communication Protocols for Public Utilities. |
| E-24 | RM19-16-000, RM19-17-000 | Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review. |
| E-25 | ER18-2208-002 | New England Power Pool Participants Committee. |

1063RD—MEETING—Continued
 [Open Meeting; January 23, 2020; 10:00 a.m.]

| Item No. | Docket No. | Company |
|----------|--|--|
| E-26 | EL18-196-001 | <i>RTO Insider LLC v. New England Power Pool Participants Committee.</i> |
| E-27 | ER09-1256-003, ER12-2708-004, ER12-2708-007, ER09-1256-005, ER12-2708-005 | Potomac-Appalachian Transmission Highline, LLC PJM Interconnection, L.L.C. |
| E-28 | ER15-1436-001 | Entergy Gulf States Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc. |
| E-29 | ER02-2001-020, ER10-1110-000, ER10-2291-001, ER11-2039-001, ER11-3028-002, ER11-3879-001, ER11-4447-000, ER12-1202-001, ER12-1170-003, ER15-455-000, ER13-183-000, ER14-663-001, ER14-2421-000, ER15-626-000 | Electric Quarterly Reports. Mint Energy, LLC. Westmoreland Partners. E-T Global Energy, LLC. BBPC, LLC. Amerigreen Energy, Inc. Mac Trading, Inc. Liberty Hill Power LLC. Imperial Valley Solar Company (IVSC) 1, LLC. Lexington Power & Light, LLC. Clear Choice Energy, LLC. Energy Discounters, LLC. Infinite Energy Corporation. North Energy Power, LLC. |
| E-30 | EL17-84-001 | PJM Interconnection, L.L.C. |
| E-31 | ER20-323-000 | Helix Ravenswood, LLC and Ravenswood Development, LLC. |
| E-32 | ER18-1743-002 | New York Independent System Operator, Inc. |
| E-33 | ER17-795-003 | ISO New England Inc. |
| E-34 | OMITTED | |
| E-35 | EL17-90-001 | <i>Linden VFT, LLC v. Public Service Electric and Gas Company and PJM Interconnection, L.L.C.</i> |
| E-36 | EL19-62-001 | <i>City Utilities of Springfield, Missouri v. Southwest Power Pool, Inc.</i> |
| E-37 | EL19-53-001, QF19-855-002 | Golden Valley Electric Association, Inc. Eco Green Generation LLC. |
| E-38 | ER20-45-000 | PJM Interconnection, L.L.C. |

GAS

| | | |
|-----|-------------|---|
| G-1 | OR19-28-000 | Medallion Delaware Express, LLC and Medallion Pipeline Company, LLC. |
| G-2 | OR19-34-000 | Medallion Midland Gathering, LLC and Medallion Pipeline Company, LLC. |

HYDRO

| | | |
|-----|------------|----------------------------|
| H-1 | P-2337-079 | PacifiCorp. |
| H-2 | P-1494-450 | Grand River Dam Authority. |

CERTIFICATES

| | | |
|-----|----------------------------|--|
| C-1 | CP18-137-000 | Columbia Gas Transmission, LLC. |
| C-2 | CP16-454-001, CP16-455-001 | Rio Grande LNG, LLC. Rio Bravo Pipeline Company, LLC. |
| C-3 | RP20-41-000 | PennEast Pipeline Company, LLC. |

Issued: January 16, 2020.
Nathaniel J. Davis Sr.,
 Deputy Secretary.

A free webcast of this event is available through <http://ferc.capitolconnection.org/>. Anyone with internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any

questions, visit <http://ferc.capitolconnection.org/> or contact Shirley Al-Jarani at 703-993-3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will

not be telecast through the Capitol Connection service.

[FR Doc. 2020-01126 Filed 1-17-20; 4:15 pm]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

| | |
|--|--------------|
| Poseidon Solar, LLC | EG20-1-000 |
| IP Athos, LLC | EG20-2-000 |
| IP Athos, II, LLC | EG20-3-000 |
| KeyCon Operating, LLC | EG20-4-000 |
| Keystone Operating, LLC | EG20-5-000 |
| Conemaugh Operating, LLC | EG20-6-000 |
| Willow Creek Wind, LLC | EG20-7-000 |
| Plum Creek Wind, LLC | EG20-8-000 |
| Reading Wind Energy, LLC | EG20-9-000 |
| Cardinal Point LLC | EG20-10-000 |
| 2W Permian Solar, LLC | EG20-11-000 |
| Twiggs County Solar, LLC | EG20-12-000 |
| KCE TX 2, LLC | EG20-13-000 |
| KCE TX 8, LLC | EG20-14-000 |
| KCE TX 7, LLC | EG20-15-000 |
| Amadeus Wind, LLC | EG20-16-000 |
| Skookumchuck Wind Energy Project, LLC | EG20-17-000 |
| Impact Solar 1, LLC | EG20-18-000 |
| Sun Streams, LLC | EG20-19-000 |
| Sunshine Valley Solar, LLC | EG20-20-000 |
| Emmons-Logan Wind Interconnection, LLC | EG20-21-000] |

Take notice that during the month of December 2019, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-00961 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15001-000]

Navajo Energy Storage Station LLC; Notice of Successive Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 1, 2019, Navajo Energy Storage Station LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Navajo Energy Storage Station Pumped Storage Project (Navajo Energy Project or project). The project would be located at the U.S. Bureau of Reclamation's (Reclamation) Lake Powell Reservoir on the Colorado River in San Juan County, Arizona.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

On August 26, 2019, the Commission asked Reclamation to confirm that non-federal development is authorized at the Lake Powell site. On October 24, 2019, Reclamation responded stating that it retains jurisdiction over hydropower development on the Lake Powell Reservoir, which is part of Reclamation's Colorado River Storage Project. On October 18, 2019, the Commission issued a letter to Navajo Energy Storage Station LLC stating that it agreed with Reclamation's jurisdictional decision over hydropower development at the Lake Powell Reservoir, but that the Commission would retain jurisdiction for hydropower facilities that would be located outside of Reclamation's development. Thus, an entity seeking to build a hydropower project that would use Reclamation's Lake Powell Reservoir would need to obtain a lease of power privilege from Reclamation, but it also would need to obtain a license from the Commission for those facilities of the hydropower project that are not under Reclamation's jurisdiction.

The proposed project would utilize the Bureau of Reclamation's Lake Powell Reservoir, created by the Glen Canyon Dam, for its lower reservoir and would consist of the following new facilities: (1) A 15,150-foot-long, 131-foot-high rockfill concrete dam that would impound an upper reservoir with a usable storage capacity of 18,600 acre feet; (2) vertical intake for the upper reservoir; (3) a shoreline intake for the lower reservoir; (4) an approximately 6,550-foot-long water conveyance structure between the two reservoirs that will include a single 35-foot-diameter headrace tunnel, eight 11-foot-diameter penstocks, eight 15-foot-diameter draft tubes, and two 31-foot-

diameter tailrace tunnels; (5) a powerhouse that includes eight variable-speed pump turbine generating units with a combined capacity of 2,210 megawatts; (6) an 18-mile-long, 500-kilovolt transmission line that will connect with the existing 230-kilovolt line owned by Western Area Power Administration; and (7) appurtenant facilities. The estimated annual generation of the Navajo Energy Project would be 3,365 gigawatt-hour.

Applicant Contact: Jim Day, CEO, Daybreak Power Inc., 113 Moore Avenue SW, Vienna, VA 22180; phone: (703) 624-4971.

FERC Contact: Timothy Konnert; phone: (202) 502-6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-15001-000.

More information about this project, including a copy of the application, can be viewed or printed on the “eLibrary” link of Commission’s website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-15001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 14, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-00924 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19-509-001]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Amended Marshall County Mine Panel 19E and 20E Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Marshall County Mine Panel 19E and 20E Project (Project) involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Marshall County, West Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity/authorization. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in

Washington, DC on or before 5:00 p.m. Eastern Time on February 12, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

This notice is being sent to the Commission’s current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. It is also available for viewing on the FERC website (www.ferc.gov) at <https://www.ferc.gov/resources/guides/gas/gas.pdf>.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to www.ferc.gov/docs-filing/esubscription.asp.

For your convenience, there are three methods you can use to submit your

comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission’s website (www.ferc.gov) under the link to *Documents and Filings*. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission’s website (www.ferc.gov) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister*. You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19-509-001) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern filed an amendment to its Abbreviated Application for a Certificate of Public Convenience and Necessity and for Related Authorizations for its proposed Marshall County Mine Panel 19E Project, submitted on September 4, 2019 in Docket No. CP19-509-000. By this Amendment, Texas Eastern requests authorization under the Natural Gas Act, Section 7(c) to excavate, elevate, and replace certain segments of its pipelines that traverse the Marshall County Coal Company’s (Marshall Coal) Mine Panels 19E and 20E, located in Marshall County, West Virginia. This Amendment reflects activities related to both Mine Panels 19E and 20E, and the construction activities proposed replace in their entirety the construction activities proposed in the Application.

Texas Eastern proposes to excavate and elevate pipeline segments of its Lines 10, 15, 25, and 30, that range from 30-inch to 36-inch-diameter and to monitor stress and strain levels on the pipelines from potential ground subsidence due to Marshall Coal’s scheduled longwall mining activities.

Concurrent with pipeline elevation, portions of Lines 10 and 15 would be replaced with new pipe to accommodate a minimum Class 2 design.¹ Texas Eastern would also perform maintenance activities on segments of Lines 25 and 30. The four mainline segments will be returned to natural gas service above ground, while remaining elevated using sandbags and skids for the duration of Marshall Coal's longwall mining activities and potential ground subsidence. Texas Eastern would reinstall the elevated pipeline segments as soon as possible to minimize the length of time that the segments are above ground, and to allow the right-of-way to be restored to its pre-construction use in accordance with landowner agreements.

Marshall Coal recently informed Texas Eastern that longwall mining activities for Mine Panel 20E may now begin as early as August of 2021. As such, Texas Eastern would need to commence activities to protect its pipelines that traverse Mine Panel 20E concurrent with planned activities to protect its pipelines that traverse Mine Panel 19E (longwall mining activities in Mine Panel 19E are anticipated to begin in October 2020) in order to ensure timely stabilization of the pipeline segments above ground for the duration of the longwall mining activities scheduled to take place at both Mine Panels. Completion of longwall mining activities and potential subsidence is anticipated in December 2020 for Mine Panel 19E and in October 2021 for Mine Panel 20E. As such, Texas Eastern is seeking to amend the timing set forth in the Application for completion of Project activities from October 2021 to October 2022, prior to the start of Texas Eastern's winter heating season.

The general location of the project facilities is shown in appendix 1.²

Land Requirements for Construction

Construction workspace would disturb about 34.2 acres of land for the pipeline excavation, elevation, and/or

¹ Lines 10 and 15 were installed prior to the Natural Gas Pipeline Safety Act, and are grandfathered to operate at greater than 72% of Specified Minimum Yield Strength. The portions of these pipelines included in this Project will be replaced with pipe that meets or exceeds the current Pipeline and Hazardous Materials Safety Administration regulations. See 49 CFR 192.611(a) (2019).

² The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

replacement. Following construction, Texas Eastern would maintain about 12.0 acres of existing right-of-way for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary³ and the Commission's website (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.⁴ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section

³ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁴ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁵ The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (www.ferc.gov). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.*,

⁵ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

CP09–509). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: January 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00966 Filed 1–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–433–001.

Applicants: Adelphia Gateway, LLC.

Description: Tariff Amendment: Adelphia NAESB amendment filing 1–14–20 to be effective 1/13/2020.

Filed Date: 1/14/20.

Accession Number: 20200114–5164.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–434–000.

Applicants: Enable Mississippi River Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Liberty Utilities RP18–923 & RP20–131 Settlement to be effective 1/1/2019.

Filed Date: 1/14/20.

Accession Number: 20200114–5081.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–435–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Calyx 51780 to BP 52119) to be effective 1/15/2020.

Filed Date: 1/14/20.

Accession Number: 20200114–5083.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–435–001.

Applicants: Gulf South Pipeline Company, LLC.

Description: Tariff Amendment: Amendment to Filing in Docket No. RP20–435–000 to be effective 1/15/2020.

Filed Date: 1/14/20.

Accession Number: 20200114–5093.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–436–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–01–14 Non-Conforming Negotiated Rate amendment to be effective 1/15/2020.

Filed Date: 1/14/20.

Accession Number: 20200114–5179.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–437–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: ETNG Jan2020 NCF Cleanup to be effective 2/14/2020.

Filed Date: 1/14/20.

Accession Number: 20200114–5184.

Comments Due: 5 p.m. ET 1/27/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00956 Filed 1–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8865–008]

Notice of Withdrawal of Existing Licensee's Notice of Intent To File a Subsequent License Application, and Soliciting Pre-Application Documents and Notices of Intent To File a License Application; N. Stanley Standal, Jr.

The current license for the Stevenson No. 1 Hydroelectric Project No. 8865 (Stevenson No. 1 Project) was issued with an effective date of July 1, 1984, for a term of 40 years, ending June 30,

2024.¹ The 70 kilowatt (kW) project is located on an unnamed tributary to the Snake River. On June 28, 2019, N. Stanley Standal, Jr. (Mr. Standal) filed an incomplete Notice of Intent (NOI) to file an application for a subsequent license for the Stevenson No. 1 Project, pursuant to section 16.6 of the Commission's regulations.² Mr. Standal failed to file an accompanying pre-application document (PAD), pursuant to section 16.7 of the Commission's regulations.³

On July 17, 2019, Commission staff waived the provision of section 5.6(a)(1) that requires the filing of a PAD at the same time that the NOI is filed and extended the deadline for filing a complete NOI and the PAD by 90 days. On October 12, 2019, Joy Heller contacted Commission staff on behalf of Mr. Standal and stated that more information would be filed before October 31, 2019. On October 30, 2019, Mr. Standal filed a revised NOI but failed to file a PAD. On November 19, 2019, Commission staff informed Mr. Standal that if a PAD was not filed within 30 days, Commission staff would consider the lack of response as an indication that he is no longer interested in seeking a subsequent license to continue operating the project and a withdrawal of his NOI to seek a subsequent license. Despite repeated efforts to contact Mr. Standal, he has not returned staff calls or filed the requisite PAD. Commission staff therefore consider Mr. Standal's NOI as withdrawn.

Pursuant to section 16.23(b) of the Commission's regulations, when an existing licensee fails to file a complete NOI and PAD within five years of expiration of the current license, the Commission must solicit applications from potential applicants other than the existing licensee.⁴ Any party interested in filing a license application or exemption (*i.e.*, a potential applicant) for the project must file an NOI and PAD within 90 days from the date of this notice.⁵ While the integrated

¹ Lynn E. Stevenson, 34 FERC 62,531 (1986).

² 18 CFR 16.6(c) (2019). At least five years before the expiration of a license for a major water power project, the licensee must file with the Commission an NOI that contains an unequivocal statement of the licensee's intention to file or not to file an application for a new license. *See also* 18 CFR 5.5 (2019).

³ 18 CFR 16.7(d)(1) (2019). A licensee must, at the time it files an NOI pursuant to sections 5.5 and 16.6, provide a copy of the PAD required by section 5.6 of the Commission's regulations to the entities specified in that paragraph. *See* 18 CFR 5.6 (2019).

⁴ 18 CFR 16.23(b) (2019).

⁵ Pursuant to section 16.24(b)(1) of the Commission's regulations, the existing licensee is prohibited from filing an application either

licensing process is the default process for preparing an application for a new license, a potential applicant may request to use alternative licensing procedures when it files its NOI.⁶

Applications for a subsequent license or exemption from potential applicants for the Stevenson No. 1 Project must be filed within 24 months prior to the expiration of the existing license.⁷

Questions concerning the process for filing an NOI should be directed to Julia Kolberg at 202-502-8261 or Julia.Kolberg@ferc.gov.

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-00959 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15008-000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Gridflex Energy, LLC

On September 23, 2019, Gridflex Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Sweetwater Pumped Storage Hydro Project to be located in San Juan County, New Mexico. Gridflex Energy, LLC subsequently amended its application on January 3, 2020, and again on January 14, 2020. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed closed-loop pumped hydropower project would consist of the following new facilities: (1) A 9,000-foot-long, 40-foot-high dam impounding an upper reservoir with a total storage capacity of 5,000 acre feet, a reservoir surface elevation of 6,770 feet above mean sea level (msl), and a reservoir surface area of 120 acres; (2) 1,700-foot-long, 130-foot-high dam impounding a lower reservoir with a total storage

capacity of 5,000 acre feet, a reservoir surface elevation of 5,685 feet msl, and a reservoir surface area of 163 acres; (3) two primary conduits including one concrete-lined vertical shaft 1,200 feet long by 25 feet in diameter, two concrete-and-steel-lined high pressure tunnels 5,000 feet long by 14 feet in diameter, and two concrete-lined tailrace tunnels 3,300 feet long by 16 feet in diameter; (4) a 500-foot-long, 80-foot-wide, 50-foot-high powerhouse complex constructed of concrete and metal formwork with three vertical shafts, each housing 200-megawatt variable-speed reversible pump-turbine and motor-generators; and (5) a 9.3-mile-long, 345-kilovolt transmission line with a tentative point of interconnection at the existing San Juan Generating Station; and (6) appurtenant facilities. Initial fill water, and make-up water for evaporation loss would be purchased from parties holding water rights associated with the San Juan Generating Station or otherwise associated with the San Juan River. The estimated annual generation of the project would be 1,051,200 megawatt hours.

Applicant Contact: Mr. Matthew Shapiro, Gridflex energy, LLC, 424 W. Pueblo St. #A, Boise, ID 83027; phone: (208) 246-9925.

FERC Contact: Benjamin Mann; Email: benjamin.mann@ferc.gov; phone: (202) 502-8127.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-15008-000.

More information about this project, including a copy of the application, can

be viewed or printed on the eLibrary link of Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-15008) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-00960 Filed 1-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20-34-000]

Notice of Request Under Blanket Authorization; Columbia Gas Transmission, LLC

Take notice that on January 6, 2020, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Houston, Texas 77002-2700, filed in the above referenced docket a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and its blanket certificate issued in Docket No. CP83-76-000 for authorization to perform installations and modifications enabling the in-line inspection of its 20-inch-diameter Line D located in Licking, Knox, Morrow, and Crawford Counties, Ohio. Specifically, Columbia proposes to: (i) Install, replace, or remove valves, pipe, and other appurtenant facilities at six locations; and (ii) install bidirectional launcher/receiver devices and appurtenant facilities at two locations. Columbia estimates the cost of the project to be approximately \$13.0 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TYY, (202) 502-8659.

Any questions regarding this application should be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana

individually or in combination with other entities.
18 CFR 16.24(b)(1) (2019).

⁶ 18 CFR 5.3(b) (2019).

⁷ 18 CFR 16.20(c) (2019).

Street, Suite 700, Houston, Texas 77002–2700, by telephone at (832) 320–5209, or by email at sorana_linder@tcenergy.com.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests

and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: January 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00957 Filed 1–21–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10004–61–OW]

Notice of Webinar Briefing and Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of webinar briefing and public meeting.

SUMMARY: The EPA's Environmental Financial Advisory Board (EFAB) will hold a webinar briefing on January 30, 2020 and a public meeting on February 11–13, 2020 in Washington, DC. The purpose of the webinar will be to receive a background briefing on the Backhaul Alaska program. The purpose of the public meeting will be to: Consider a report by the EFAB Stormwater Infrastructure Finance Task Force Workgroup; conduct a consultation with the EPA on financing options for the Backhaul Alaska program; receive briefings on other environmental financing topics; and consider possible future projects.

DATES: The webinar will be held on January 30, 2020 from 1 p.m. to 3 p.m. EST. The February 11, 2020 through February 13, 2020 public meetings will be held as follows: February 11 and 12, 2020 from 9 a.m. to 5 p.m. EST, and on February 13, 2020 from 9 a.m. to 1 p.m. EST.

ADDRESSES: The webinar briefing will be conducted by webinar only and is open to the public; interested persons must register in advance at <https://register.gotowebinar.com/register/2221546055725723395>. The public meeting will be held at the Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037. The meeting is open to the public; however, seating is limited. All members of the public who wish to attend the meeting are asked to register in advance, no later than February 5, 2020 at <https://efabmeetingfeb2020.eventbrite.com>.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the webinar briefing or the public meeting may contact Stephanie Sanzone, EFAB Coordinator, via telephone/voice mail (202) 564–2839 or email at sanzone.stephanie@epa.gov. The EFAB mailing address is: EPA Environmental Financial Advisory Board (4204M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. General information about the EFAB can be found on the EPA website at <https://www.epa.gov/waterfinancecenter/efab>.

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to the EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within the EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a webinar briefing and a public meeting for the following purposes:

Webinar Briefing: The purpose of the webinar on January 30, 2020 will be for members of the EFAB to receive a briefing on the Backhaul Alaska program in preparation for a consultation on the program to be held at the February 11–13, 2020 public meeting. Due to unforeseen administrative circumstances, the EPA is announcing this webinar with less than 15 calendar days notice. The webinar is open to the public, but no oral public comments will be accepted during the briefing. Written public comments relating to the Backhaul Alaska consultation should be provided in accordance with the instructions below on written statements.

Public Meeting: The agenda for the meeting on February 11–13, 2020 will include:

(1) Review of a report by the EFAB Stormwater Infrastructure Finance Task Force Workgroup. Pursuant to Section 4101 of the America's Water Infrastructure Act of 2018, the Task Force was established under the auspices of the EFAB to prepare a report on the availability of public and private sources of funding for the construction, rehabilitation, and operation and maintenance of stormwater infrastructure. The final Task Force report will be considered by the EFAB for revision or approval for transmittal

to the agency. For additional information on the work of the Task Force, contact Ms. Ellen Tarquinio, EPA staff lead, at tarquinio.ellen@epa.gov.

(2) Consultation on financing options for the Backhaul Alaska program. In 2019, the EFAB prepared an advisory report on revenue options for a waste service backhaul program in rural Alaska. At the request of EPA Region 10, the EFAB has agreed to engage in further discussions on financing and governance options for the Backhaul Alaska program. A consultation is a form of advisory activity that provides oral advice and feedback from the EFAB members at a public meeting. For additional information on the Backhaul Alaska program, contact Ms. Gabriela Carvalho, EPA Region 10, at carvalho.gabriela@epa.gov.

(3) Briefings on environmental finance topics. The EFAB will hear from invited EPA representatives on issues relating to financing of environmental protection in small communities.

(4) Discussion of potential future advisory topics. EFAB members will discuss potential environmental finance topics on which the Board may wish to provide advice and recommendations to the EPA.

Availability of Meeting Materials: Briefing materials for the webinar and materials for the February 11–13, 2020 meeting (including meeting agenda and draft review documents) will be available on the EPA website at <https://www.epa.gov/waterfinancecenter/efab>.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to the EPA. Members of the public can submit comments on matters being considered by the EFAB for consideration by members as they develop their advice and recommendations to the EPA.

Oral Statements: In general, individuals or groups requesting an oral presentation at EFAB public meetings will be limited to five minutes. Persons interested in providing oral statements at the February 11–13, 2020 meeting should contact Stephanie Sanzone in writing (preferably via email) at the contact information noted above by

February 5, 2020 to be placed on the list of registered speakers.

Written Statements: Written statements for the February 11–13, 2020 meeting should be received by February 5, 2020 so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to efab@epa.gov (preferred) or in hard copy with original signature to the EFAB mailing address above. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Sandra Williams at (202) 564–4999 or williams.sandra@epa.gov at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Dated: January 13, 2020.

Andrew Sawyers,

*Director, Office of Wastewater Management,
Office of Water.*

[FR Doc. 2020–00980 Filed 1–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–88–Region 6]

Notice of Availability of Final Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of the Environmental Protection Agency Region 6 (EPA) is providing notice of the availability of EPA's final determination that storm water discharges from the Los Alamos Urban Cluster (as defined by the 2010 Decennial Census) and Los Alamos National Laboratory (LANL) property are contributing to violations of New Mexico water quality standards (WQS) and require National Pollutant Elimination System (NPDES) permit coverage under the Clean Water Act

(CWA). This action is in response to a June 30, 2014 petition filed with EPA by Amigos Bravos entitled “A Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit.”

DATES: EPA's *Designation Decision and Record of Decision in Response to Petition by Amigo Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit* (“EPA's Decision Document”) was signed on December 16, 2019.

ADDRESSES: For further information contact Ms. Evelyn Rosborough via email: rosborough.evelyn@epa.gov, or may be mailed to Ms. Evelyn Rosborough, Environmental Protection Agency, Water Division (6WQ–NP), 1201 Elm Street, Suite 500, Dallas, TX 75270.

SUPPLEMENTARY INFORMATION: EPA is providing notice of availability of its final determination that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster (as defined by the 2010 Decennial Census) and on Los Alamos National Laboratory (LANL) property within Los Alamos County and Santa Fe County are contributing to violations of New Mexico water quality standards (WQS) and require NPDES permit coverage. EPA's final designation determination is made pursuant to the authority of CWA § 402(p)(2)(E) and 40 CFR 122.26(a)(9)(i)(D) and 122.26(f)(2). CWA § 402(p)(2)(E) and 40 CFR 122.26(a)(9)(i)(D) allow EPA to designate for NPDES permit coverage stormwater discharges that EPA determines are contributing to violations of WQS, but are not otherwise required to be permitted under EPA's stormwater regulations.

Details of EPA's final designation determination are available in EPA's Decision Document. EPA's Decision Document and ancillary materials may be viewed on the EPA Region 6 web page at <https://www.epa.gov/npdes/epas-residual-designation-authority>.

Issued on: Dated: December 16, 2019.

Ken McQueen,

Regional Administrator, U.S. Environmental Protection Agency, Region 6.

[FR Doc. 2020–00981 Filed 1–21–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–4]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that is used in determining whether a Federal Home Loan Bank (Bank) member qualifies as a “community financial institution” (CFI) to \$1,224,000,000, based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL). These changes took effect on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: James Hedrick, Division of Federal Home Loan Bank Regulation, (202) 649–3319, James.Hedrick@fhfa.gov; or Eric M. Raudenbush, Associate General Counsel, (202) 649–3084, Eric.Raudenbush@fhfa.gov, (not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a CFI certain advantages over non-CFI insured depository institutions in qualifying for Bank membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.¹ Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA’s regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below the statutory cap.² The Bank Act was amended in 2008 to set the statutory cap at \$1 billion and to require FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL.³ For 2019, FHFA set the CFI asset cap at \$1,199,000,000, which reflected a 2.2 percent increase

over 2018, based upon the increase in the CPI–U between 2018 and 2019.⁴

II. The CFI Asset Cap for 2020

As of January 1, 2020, FHFA has increased the CFI asset cap to \$1,224,000,000, which reflects a 2.1 percent increase in the unadjusted CPI–U from November 2018 to November 2019. Consistent with the practice of other Federal agencies, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year. The new CFI asset cap was obtained by applying the percentage increase in the CPI–U to the unrounded amount for the preceding year and rounding to the nearest million, as has been FHFA’s practice for all previous adjustments.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been seasonally adjusted (*i.e.*, the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying “escalation” provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Dated: January 14, 2020.

Andre D. Galeano,

Deputy Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency.

[FR Doc. 2020–00929 Filed 1–21–20; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–3]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as “Community Support Requirements,” which has been assigned control number 2590–0005 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on March 31, 2020.

DATES: Interested persons may submit comments on or before March 23, 2020.

ADDRESSES: Submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘Community Support Requirements, (No. 2020–N–3)’” by any of the following methods:

- *Agency website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: “Community Support Requirements, (No. 2020–N–3).”

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

Deatra D. Perkins, Senior Policy Analyst, Division of Housing Mission & Goals, Deatra.Perkins@fhfa.gov, (202) 649–3133; or Eric Raudenbush, Associate General Counsel, Eric.Raudenbush@fhfa.gov, (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

¹ See 12 U.S.C. 1424(a), 1430(a).

² See 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

³ See 12 U.S.C. 1422(10)(B); 12 CFR 1263.1 (defining the term *CFI asset cap*).

⁴ See 84 FR 2225 (Feb. 6, 2019).

A. Background

The Federal Home Loan Bank System (System) consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office of the Banks that issues and services their debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through eligible non-member "housing associates." Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers.

Section 10(g)(1) of the Bank Act requires the Director of FHFA to promulgate regulations establishing standards of community investment or service that Bank member institutions must meet in order to maintain access to long-term advances (*i.e.*, loans with a maturity of five years or greater made by a Bank to a member).¹ Section 10(g)(2) of the Bank Act requires that, in establishing these community support requirements for Bank members, FHFA take into account factors such as the member's performance under the Community Reinvestment Act of 1977 (CRA)² and record of lending to first-time homebuyers.³ FHFA's community support regulation, which establishes standards and review criteria for determining compliance with section 10(g) of the Bank Act, is set forth at 12 CFR part 1290.

Part 1290 requires that each Bank member subject to community support review submit to FHFA biennially a completed Community Support Statement (Form 060), which contains several short questions the answers to which are used by FHFA to assess the responding member's compliance with the community support standards.⁴ Members are strongly encouraged to complete and submit Form 060 online, but may submit a version via email or fax if they cannot complete the submission online. In part I of the Form, a member that is subject to the CRA must record its most recent CRA rating and the year of that rating. Part II of the

Form addresses a member's efforts to assist first-time homebuyers. A member may either record the number and dollar amount of mortgage loans made to first-time homebuyers in the previous or current calendar year (part II.A), or indicate the types of programs or activities it has undertaken to assist first-time homebuyers by checking selections from a list (part II.B), or do both. If a member has received a CRA rating of "Outstanding," it need not complete part II of the Form. A copy of the current Form and related instructions appear at the end of this Notice.

Part 1290 also establishes the circumstances under which FHFA will restrict a member's access to long-term Bank advances and to Affordable Housing Program (AHP), Community Investment Program (CIP) and Community Investment Cash Advance (CICA) programs for failure to meet the community support requirements.⁵ It permits Bank members whose access to long-term advances has been restricted to apply directly to FHFA to remove the restriction if certain criteria are met.⁶

B. Need for and Use of the Information Collection

FHFA uses the information collection contained in FHFA Form 060 and part 1290 to determine whether Bank members satisfy the statutory and regulatory community support requirements and to ensure that, as required by statute and regulation, only Bank members that meet those requirements maintain continued access to long-term Bank advances and to AHP, CIP, and CICA programs.

The OMB control number for this information collection is 2590-0005, which is due to expire on March 31, 2020. The respondents are Bank member institutions.

C. Burden Estimate

FHFA has analyzed the two facets of this information collection in order to estimate the hour burdens that the collection will impose upon Bank members annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 2,154 hours. The method FHFA used to determine the annual hour burden for each facet of the information collection is explained in detail below.

1. Community Support Statements

There are currently about 6,800 Bank members. Most of these are required to

submit a completed Community Support Statement biennially, with members that are non-depository community development financial institutions (CDFIs) or that have been members for less than one year as of March 31st of the year submission is required exempted from the submission requirement. Based on the facts that there were 60 non-depository CDFI Bank members as of September 30, 2019, and that the average annual number of new Bank members system-wide was about 140 over the last three years, FHFA estimates that about 6,600 members will be required to submit the biennial statement over each of the next several cycles, which corresponds to an annual average of 3,300 respondents. FHFA estimates that the average preparation time for each Community Support Statement will be 0.65 hours. The estimate for the total annual hour burden on Bank members in connection with the preparation and submission of Community Support Statements is 2,145 hours (3,300 Statements × 0.65 hours).

2. Requests To Remove a Restriction on Access to Long-Term Advances

FHFA estimates that an annual average of 12 Bank members whose access to long-term advances and to AHP, CIP, and CICA programs has been restricted will submit requests to FHFA to remove those restrictions, and that the average preparation time for each request will be 0.75 hours. The estimate for the total annual hour burden on members in connection with the preparation and submission of requests to remove a restriction on access to long-term advances is 9 hours (12 requests × 0.75 hours).

D. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: January 15, 2020.

Kevin Winkler,
Chief Information Officer, Federal Housing
Finance Agency.

BILLING CODE 8070-01-P

¹ See 12 U.S.C. 1430(g)(1).

² 12 U.S.C. 2901 *et seq.*

³ See 12 U.S.C. 1430(g)(2).

⁴ See 12 CFR 1290.2. Non-depository community development financial institutions and institutions that have been Bank members for less than one year as of March 31 of the year the forms are due are not required to submit Form 060.

⁵ See 12 CFR 1290.5(b), (e).

⁶ See 12 CFR 1290.5(d).



FEDERAL HOUSING FINANCE AGENCY
COMMUNITY SUPPORT PROGRAM
COMMUNITY SUPPORT STATEMENT

(see instructions page 2)

FHFA Federal Home Loan Bank (FHLBank) Member ID Number: *[online form: Member fills in]*
Name of FHLBank Member Institution: *[online form: FHFA automatically fills in once the member enters its FHFA ID Number]*
Mailing Address: *[online form: FHFA fills in]*
City: *[online form: FHFA fills in]* **State:** *[online form: FHFA fills in]* **Zip Code:** *[online form: FHFA fills in]*
Submitter Name: *[online form: Member fills in]* **Title:** *[online form: Member fills in]*
Work Email: *[Member fills in and used for validation purposes only]*

Part I. Community Reinvestment Act (CRA) Standard:

Most recent federal CRA rating: *[online form: drop down list]* Year of most recent federal CRA rating: *[online form: drop down list]*

Part II. First-time Homebuyer Standard: All Federal Home Loan Bank members must complete either Section A or B of this part, except that members with "Outstanding" federal CRA ratings need not complete this part. Members should use data or activities for the previous or current calendar year in completing this part.

A. Complete the following two questions: If your institution did not make, or did not track, mortgage loans to first-time homebuyers, you must complete Section B of this part. *[online form: Member completes]*

- 1. Number of mortgage loans made to first-time homebuyers # _____
- 2. Dollar amount of mortgage loans made to first-time homebuyers \$ _____

B. Check as many as applicable:

- 1. Offer in-house first-time homebuyer program (e.g., underwriting, marketing plans, outreach programs) _____
- 2. Offer other in-house lending products that serve first-time or low- and moderate-income homebuyers _____
- 3. Offer flexible underwriting standards for first-time homebuyers _____
- 4. Participate in nationwide first-time homebuyer programs (e.g., Fannie Mae, Freddie Mac) _____
- 5. Participate in federal government programs that serve first-time homebuyers (e.g., FHA, VA, USDA RD) _____
- 6. Participate in state or local government programs targeted to first-time homebuyers (e.g., mortgage revenue bond financing) _____
- 7. Provide financial support or technical assistance to community organizations that assist first-time homebuyers _____
- 8. Participate in loan consortia that make loans to first-time homebuyers _____
- 9. Participate in or support special counseling or homeownership education targeted to first-time homebuyers _____
- 10. Hold investments or make loans that support first-time homebuyer programs _____
- 11. Hold mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers _____
- 12. Use affiliated lenders, credit union service organizations, or other correspondent, brokerage or referral arrangements with specific unaffiliated lenders, that provide mortgage loans to first-time or low- and moderate-income homebuyers _____
- 13. Participate in the Affordable Housing Program or other targeted community investment/development programs offered by the Federal Home Loan Bank _____
- 14. Other (attach description of other activities supporting first-time homebuyers; see instructions for Part II) _____
- 15. None of the above (attach explanation of any mitigating factors; see instructions for Part II) _____

Part III. Certification: By submitting this Community Support Statement, I certify that I am a senior official of the above institution, that I am authorized to provide this information to FHFA, and that the information in this Statement and any attachments is accurate to the best of my knowledge.

Sign: *[not on the online form; "Submit" button is equivalent]* _____ **Date:** *[not on the online form; date is automatic]* _____

Community Support Statement (FHFA Form 060) Instructions

Purpose: Section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. § 1430(g)] sets forth the community support requirements. Under the Federal Housing Finance Agency's (FHFA) implementing community support regulation [12 CFR part 1290], FHFA is required to take into account a Federal Home Loan Bank (Bank) member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.] (federal CRA) and its record of lending to first-time homebuyers, in determining whether to maintain the member's access to long-term Bank advances and to a Bank's Affordable Housing Program (AHP) and targeted Community Investment Cash Advances (CICA) programs. For purposes of community support review, the term "long-term advances" means advances with a term to maturity greater than one year.

Part I. (CRA Standard): Members subject to the federal CRA must complete this part. Provide your institution's most recent federal CRA rating and the year of the rating. Credit unions and insurance companies, which are not subject to the federal CRA, should indicate "N/A" [i.e., not applicable] in the CRA rating field on this Community Support Statement. If your institution is not a credit union or insurance company and is not subject to the federal CRA, indicate the reason for the exemption. If a member's most recent federal CRA rating is "Needs to Improve," FHFA will place the member on probation. During the probationary period, the member will retain access to long-term Bank advances and Bank AHP and CICA programs. If the member does not receive an improved federal CRA rating at its next CRA evaluation, FHFA will restrict its prospective access to long-term Bank advances and Bank AHP and CICA programs. If a member's most recent federal CRA rating is "Substantial Non-compliance," FHFA will restrict the member's prospective access to long-term Bank advances and AHP and CICA programs. The restriction will remain in effect until the member's federal CRA rating improves.

Part II. (First-time Homebuyer Standard): All members, except those with "Outstanding" federal CRA ratings, must complete this part. A member may satisfy the first-time homebuyer standard either by: demonstrating lending performance to first-time homebuyers (Section A); or demonstrating other financial support or participation in programs, products, services or investments, that directly or indirectly assists first-time homebuyers (Section B); or by a combination of both factors. If none of the information requested in this part describes your institution's activities to support first-time homebuyers, you may attach a brief description of other activities of your institution that support first-time homebuyers, or a brief explanation of any mitigating factors that adversely affect your institution's ability to assist first-time homebuyers, such as charter or operational limitations or market conditions. If a member does not demonstrate assistance to first-time homebuyers or include an explanation of mitigating factors on this Community Support Statement, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs. The restriction will remain in effect until the member submits applicable information to FHFA that demonstrates the member's compliance with the first-time homebuyer standard.

Part III. (Certification): All members must complete this part. A senior official of your institution with authorization to provide the information in this Community Support Statement must certify that the information in this Community Support Statement and any attachments are accurate to the best of his/her knowledge. If a member submits a Community Support Statement that does not include this required certification, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs.

Assistance: Your institution's Federal Home Loan Bank has a Community Support Program Representative that can assist you in preparing this Community Support Statement. Please contact your FHLBank's Community Support Program Representative: <https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/FHLBanks-CSP-Representatives.pdf>

Federal Housing Finance Agency
Division of Housing Mission and Goals
400 7th Street, S.W.
Washington, D.C. 20219

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

FHFA Form 060

OMB Number 2590-0005

Expires 03/31/2020

Page 2 of 2

[FR Doc. 2020-00933 Filed 1-21-20; 8:45 am]

BILLING CODE 8070-01-C

FEDERAL HOUSING FINANCE AGENCY

[No. 2020-N-2]

Proposed Collection; Comment Request**AGENCY:** Federal Housing Finance Agency.**ACTION:** 60-Day notice of submission of information collection for approval from Office of Management and Budget.**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments

concerning an information collection known as "Members of the Banks," which has been assigned control number 2590-0003 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on March 31, 2020.

DATES: Interested persons may submit comments on or before March 23, 2020.**ADDRESSES:** Submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'Members of the Banks, (No. 2020-N-02)'" by any of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: "Members of the Banks, (No. 2020-N-2)."

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the

electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, *Jonathan.Curtis@fhfa.gov*, (202) 649-3321; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov*, (202) 649-3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office of the Banks that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under the authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. The Banks carry out their public policy functions primarily by providing low cost loans, known as advances, to their members. With limited exceptions, an institution may obtain advances and access other products and services provided by a Bank only if it is a member of that Bank.

The Bank Act limits membership in any Bank to specific types of financial institutions located within the Bank's district that meet specific eligibility requirements. Section 4 of the Bank Act specifies the types of institutions that may be eligible for membership and establishes eligibility requirements that each type of applicant must meet in order to become a Bank member.¹ That provision also specifies that (with limited exceptions) an eligible institution may become a member only of the Bank of the district in which the institution's "principal place of business" is located.² With respect to the termination of Bank membership, section 6(d) of the Bank Act sets forth requirements pursuant to which an institution may voluntarily withdraw

from membership or a Bank may terminate an institution's membership for cause.³

B. Need For and Use of the Information Collection

FHFA's regulation entitled "Members of the Banks," located at 12 CFR part 1263, implements the statutory provisions on Bank membership and otherwise establishes substantive and procedural requirements relating to the initiation and termination of membership. Many of the provisions in the membership regulation require that an institution submit information to a Bank or to FHFA, in most cases to demonstrate compliance with statutory or regulatory requirements or to request action by the Bank or Agency.

There are four types of information collections that may occur under part 1263. First, the regulation provides that (with limited exceptions) no institution may become a member of a Bank unless it has submitted to that Bank an application that documents the applicant's compliance with the statutory and regulatory membership eligibility requirements and that otherwise includes all required information and materials.⁴ Second, the regulation provides applicants that have been denied membership by a Bank the option of appealing the decision to FHFA. To file such an appeal, an applicant must submit to FHFA a copy of the Bank's decision resolution denying its membership application and a statement of the basis for the appeal containing sufficient facts, information, and analysis to support the applicant's position.⁵ Third, the regulation provides that, in order to initiate a voluntary withdrawal from Bank membership, a member must submit to its Bank a written notice of intent to withdraw.⁶ Fourth, under certain circumstances, the regulation permits a member of one Bank to transfer its membership to a second Bank "automatically" without either initiating a voluntary withdrawal from the first Bank or submitting a membership application to the second Bank. Despite the regulatory reference to such a transfer as being "automatic," a member meeting the criteria for an automatic transfer must initiate the transfer process by filing a request with its current Bank, which will then arrange the details of the transfer with the second Bank.⁷

³ See 12 U.S.C. 1426(d).

⁴ See 12 CFR 1263.2(a), 1263.6-1263.9, 1263.11-1263.18.

⁵ See 12 CFR 1263.5.

⁶ See 12 CFR 1263.26.

⁷ See 12 CFR 1263.4(b), 1263.18(d), (e).

The Banks use most of the information collected under part 1263 to determine whether an applicant satisfies the statutory and regulatory requirements for Bank membership and should be approved as a Bank member. The Banks may use some of the information collected under part 1263 as a means of learning that a member wishes to withdraw or to transfer its membership to a different Bank so that the Bank can begin to process those requests. In rare cases, FHFA may use the collected information to determine whether an institution that has been denied membership by a Bank should be permitted to become a member of that Bank.

The OMB control number for this information collection is 2590-0003, which is due to expire on March 31, 2020. The likely respondents are financial institutions that are, or are applying to become, Bank members.

C. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the four collections under this control number and estimates that the average annual burden imposed on all respondents by those collections over the next three years will be 2,188 hours. This estimate is derived from the following calculations:

1. Membership Applications

FHFA estimates that the average number of applications for Bank membership submitted annually will be 144 and that the average time to prepare and submit an application and supporting materials will be 15 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of applications for Bank membership is (144 applications × 15 hours per application) = 2,160 hours.

2. Appeals of Membership Denials

FHFA estimates that the average number of applicants that have been denied membership by a Bank that will appeal such a denial to FHFA will be 1 and that the average time to prepare and submit an application for appeal will be 10 hours. Accordingly, the estimate for the annual hour burden associated with the preparation and submission of membership appeals is (1 appellants × 10 hours per application) = 10 hours.

3. Notices of Intent To Withdraw From Membership

FHFA estimates that the average number of Bank members submitting a notice of intent to withdraw from membership annually will be 5 and that

¹ See 12 U.S.C. 1424(a).

² See 12 U.S.C. 1424(b).

the average time to prepare and submit a notice will be 1.5 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of notices of intent to withdraw is (5 withdrawing members × 1.5 hours per application) = 7.5, rounded to 8 hours.

4. Requests for Transfer of Membership to Another Bank District

FHFA estimates that the average number of Bank members submitting a request for transfer to another Bank will be 5 and that the average time to prepare and submit a request will be 2 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of requests for automatic transfer is (5 transferring members × 2 hours per request) = 10 hours.

D. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: January 15, 2020.
Kevin Winkler,
Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2020-00930 Filed 1-21-20; 8:45 am]

BILLING CODE 8070-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

77 K Street NE, 10th Floor, Washington, DC 20002
 January 27, 2020, 8:30 a.m.

Open Session

1. Approval of the December 16, 2019 Board Meeting Minutes
2. Monthly Reports
 - (a) Participant Activity Report
 - (b) Legislative Report
3. Quarterly Reports
 - (c) Investment Policy
 - (d) Audit Status
 - (e) Budget Review
4. Annual Expense Ratio Review
5. Internal Audit Update
6. Participant Outreach

Closed Session

Information covered under 5 U.S.C. 552b(c)(4) and (c)(9)(b).

CONTACT PERSON FOR MORE INFORMATION:
 Kimberly Weaver, Director, Office of External Affairs, (202) 942-1640.

Dated: January 15, 2020.
Megan Grumbine,
General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020-00927 Filed 1-21-20; 8:45 am]

BILLING CODE 6760-01-P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

**EARLY TERMINATIONS GRANTED
 DECEMBER 1, 2019 THRU DECEMBER 31, 2019**

12/02/2019

| | | |
|----------------|---|--|
| 20200209 | G | PAR Investment Partners, L.P.; Expedia Group, Inc.; PAR Investment Partners, L.P. |
| 20200252 | G | Goldman Sachs Renewable Power LLC; Clean Focus Yield Limited; Goldman Sachs Renewable Power LLC. |
| 20200254 | G | ABRY Partners IX, L.P.; Genossenschaft Constanter; ABRY Partners IX, L.P. |
| 20200257 | G | Platinum Equity Capital Partners V, L.P.; Centerfield Media Parent, Inc.; Platinum Equity Capital Partners V, L.P. |
| 20200259 | G | Gores Holdings III, Inc.; Shay Holding Corporation; Gores Holdings III, Inc. |
| 20200265 | G | Georgia's Own Credit Union; DOCO Credit Union; Georgia's Own Credit Union. |

12/03/2019

| | | |
|----------------|---|---|
| 20200268 | G | Stonepeak Infrastructure Fund III (AIV I) LP; Targa Resources Corp.; Stonepeak Infrastructure Fund III (AIV I) LP. |
| 20200271 | G | Minnesota Mutual Companies, Inc.; Empyrean Benefit Solutions, Inc.; Minnesota Mutual Companies, Inc. |
| 20200274 | G | Tokio Marine Holdings, Inc.; Privilege Group Holdings, L.P.; Tokio Marine Holdings, Inc. |
| 20200277 | G | Sequoia Capital Global Growth Fund III—EP, L.P.; Freshworks Inc.; Sequoia Capital Global Growth Fund III—EP, L.P. |
| 20200278 | G | Alphabet Inc.; Freshworks Inc.; Alphabet Inc. |
| 20200296 | G | Starwood Energy Infrastructure Fund III U.S. Investor, L.P.; ArcLight Energy Partners Fund V, L.P.; Starwood Energy Infrastructure Fund III U.S. Investor, L.P. |
| 20200305 | G | Open Text Corporation; Carbonite, Inc.; Open Text Corporation. |

12/05/2019

| | | |
|----------------|---|---|
| 20200033 | G | Apax IX USD L.P.; Polymer Logistics N.V.; Apax IX USD L.P. |
| 20200190 | G | WaterBridge Equity Finance LLC; Blackstone Energy Partners II Q L.P.; WaterBridge Equity Finance LLC. |
| 20200218 | G | The Auto Club Group; Carolina Motor Club, Inc.; The Auto Club Group. |

EARLY TERMINATIONS GRANTED—Continued
DECEMBER 1, 2019 THRU DECEMBER 31, 2019

| | | |
|----------------|---|--|
| 20200255 | G | Daelim Industrial Co., Ltd.; Kraton Corporation; Daelim Industrial Co., Ltd. |
| 20200261 | G | Kaman Corporation; Peter J. Balsells; Kaman Corporation. |
| 20200262 | G | IIF US Holding 2 LP; Bishop Infrastructure S1 L.P.; IIF US Holding 2 LP. |
| 20200275 | G | Fox Corporation; Nexstar Media Group, Inc.; Fox Corporation. |
| 20200282 | G | BBMI Investments, LLC; Phillip W. Pulley; BBMI Investments, LLC. |
| 20200285 | G | Global Infrastructure Solutions Inc.; The Layton Companies, Inc.; Global Infrastructure Solutions Inc. |
| 20200288 | G | General Catalyst Group IX, L.P.; Guild Education, Inc.; General Catalyst Group IX, L.P. |
| 20200290 | G | Digi International Inc.; Opegear, Inc.; Digi International Inc. |
| 20200297 | G | ASP VIII UPF LP; United PF Partners, LLC; ASP VIII UPF LP. |
| 20200308 | G | PayPal Holdings, Inc.; Honey Science Corporation; PayPal Holdings, Inc. |

12/06/2019

| | | |
|----------------|---|--|
| 20200263 | G | OHCP TEM Holdco, L.P.; Telesoft Holdings, LLC; OHCP TEM Holdco, L.P. |
| 20200267 | G | InPhi Corporation; eSilicon Corporation; InPhi Corporation. |
| 20200280 | G | Mizuho Leasing Company, Limited; Aircastle Limited; Mizuho Leasing Company, Limited. |
| 20200286 | G | Canada Pension Plan Investment Board; Riverstone/Carlyle Renewable and Alternative Energy Fund II; Canada Pension Plan Investment Board. |
| 20200287 | G | Canada Pension Plan Investment Board; Pattern Energy Group, Inc.; Canada Pension Plan Investment Board. |
| 20200294 | G | Allied Universal Topco LLC; Sun Capital Partners VI, L.P.; Allied Universal Topco LLC. |
| 20200312 | G | Blackstone Buzz Holdings L.P.; Andrey Ogandzhanyants; Blackstone Buzz Holdings L.P. |
| 20200313 | G | Kirin Holdings Company, Limited; New Belgium Brewing Company, Inc.; Kirin Holdings Company, Limited. |

12/09/2019

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|----------------|---|---|
| 20200281 | G | Marubeni Corporation; Aircastle Limited; Marubeni Corporation. |
| 20200293 | G | Givaudan, S.A.; Estate of Kenneth G. Voorhees, Jr.; Givaudan, S.A. |
| 20200315 | G | Universal Corporation; James P. Early; Universal Corporation. |
| 20200316 | G | Sonoco Products Company; ESCO Technologies Inc.; Sonoco Products Company. |
| 20200318 | G | Penelope Group Holdings, LP; Dean V. and Darcy R. Christal; Penelope Group Holdings, LP. |
| 20200324 | G | Clayton, Dubilier & Rice Fund X, L.P.; Hologic, Inc.; Clayton, Dubilier & Rice Fund X, L.P. |
| 20200339 | G | Acciona, S.A.; Nordex SE; Acciona, S.A. |
| 20200344 | G | Harry B. Matthews, Jr. Revocable Trust; LFJR 2012 Dynasty LP; Harry B. Matthews, Jr. Revocable Trust. |
| 20200345 | G | RCP Artemis Co-Invest, LP; Ladenburg Thalmann Financial Services Inc.; RCP Artemis Co-Invest, LP. |
| 20200355 | G | Genstar BI Gen Holdings, L.P.; UnitedHealth Group Incorporated; Genstar BI Gen Holdings, L.P. |

2/11/2019

| | | |
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| 20200283 | G | Preservation Freehold Company; John F. Taylor; Preservation Freehold Company. |
| 20200289 | G | HMS Holdings Corp.; AP VIII Olympus VoteCo, LLC; HMS Holdings Corp. |
| 20200326 | G | Trident VII, L.P.; PHR Holding Company, L.P.; Trident VII, L.P. |
| 20200332 | G | ACON Equity Partners IV, L.P.; Saw Mill Capital Partners, LP; ACON Equity Partners IV, L.P. |
| 20200333 | G | Chicago Pacific Founders Fund II, LP; Andrew Smith; Chicago Pacific Founders Fund II, LP. |
| 20200334 | G | Chicago Pacific Founders Fund II, LP; Peter Smith; Chicago Pacific Founders Fund II, LP. |

12/12/2019

| | | |
|----------------|---|---|
| 20200089 | G | Thoma Bravo Fund XIII-A, L.P.; XIO Platinum LP; Thoma Bravo Fund XIII-A, L.P. |
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12/13/2019

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|----------------|---|--|
| 20200291 | G | Roivant Sciences Ltd.; Roivant Sciences Ltd.; Roivant Sciences Ltd. |
| 20200292 | G | Sumitomo Chemical Co., Ltd.; Roivant Sciences Ltd.; Sumitomo Chemical Co., Ltd. |
| 20200335 | G | Acerinox S.A.; Lindsay Goldberg IV, L.P.; Acerinox S.A. |
| 20200337 | G | Arbor Investments IV, L.P.; The PNC Financial Services Group, Inc.; Arbor Investments IV, L.P. |
| 20200346 | G | LCI Industries; Audax Private Equity Fund IV, L.P.; LCI Industries. |
| 20200357 | G | LLCP LMM GP, LLC; Resolution Economics Group LLC; LLCP LMM GP, LLC. |

12/16/2019

| | | |
|----------------|---|---|
| 20191386 | G | Roche Holding Ltd; Spark Therapeutics, Inc.; Roche Holding Ltd. |
|----------------|---|---|

12/17/2019

| | | |
|----------------|---|--|
| 20200338 | G | Railtrust Holdings Limited; Generate Capital, Inc.; Railtrust Holdings Limited. |
| 20200360 | G | KKR Americas Fund XII (Neptune), L.P.; Caroline Hunt Trust Estate; KKR Americas Fund XII (Neptune), L.P. |
| 20200363 | G | Agnaten SE; Kylie K. Jenner; Agnaten SE. |
| 20200367 | G | Alphabet Inc.; Duolingo, Inc.; Alphabet Inc. |
| 20200369 | G | RCAF VII AIV I, L.P.; Renovus Capital Partners II, L.P.; RCAF VII AIV I, L.P. |
| 20200370 | G | Halifax Capital Partners IV, L.P.; TriMech Holdings, LLC; Halifax Capital Partners IV, L.P. |
| 20200373 | G | Verisk Analytics, Inc.; FAST HoldCo, LLC; Verisk Analytics, Inc. |
| 20200377 | G | Daniele Holdco LLC; Creminelli Fine Meats, LLC; Daniele Holdco LLC. |
| 20200378 | G | GFL Environmental Holdings, Inc.; Scott T. Earl; GFL Environmental Holdings, Inc. |
| 20200379 | G | PRA Health Sciences, Inc.; Essence International Financial Holdings (Hong Kong) Limited; PRA Health Sciences, Inc. |

EARLY TERMINATIONS GRANTED—Continued
DECEMBER 1, 2019 THRU DECEMBER 31, 2019

| | | |
|-------------------|---|--|
| 20200384 | G | Trident VII, L.P.; The Goldman Sachs Group, Inc.; Trident VII, L.P. |
| 12/18/2019 | | |
| 20200272 | G | Madison Dearborn Capital Partners VII—A, L.P.; Realogy Holdings Corp.; Madison Dearborn Capital Partners VII—A, L.P. |
| 20200307 | G | Lindsay Goldberg IV—A Pixelle AIV L.P.; Verso Corporation; Lindsay Goldberg IV—A Pixelle AIV L.P. |
| 20200366 | G | Doosan Infracore Co., Ltd.; Jeffrey E Perelman; Doosan Infracore Co., Ltd. |
| 20200368 | G | Silver Lake Partners V DE (AIV), L.P.; STG III, L.P.; Silver Lake Partners V DE (AIV), L.P. |
| 20200376 | G | Novartis AG; The Medicines Company; Novartis AG. |
| 12/20/2019 | | |
| 20191753 | G | Performance Food Group Company; Reyes Holdings, L.L.C.; Performance Food Group Company. |
| 20200192 | G | Bon Secours Mercy Ministries; Community Health Systems Inc.; Bon Secours Mercy Ministries. |
| 20200303 | G | Ford Motor Company; Rivian Automotive, Inc.; Ford Motor Company. |
| 20200304 | G | Nippon Telegraph and Telephone Corporation; Jolly Somaiya; Nippon Telegraph and Telephone Corporation. |
| 20200311 | G | Purpose Domains Feeder I, LP; INTERNET SOCIETY; Purpose Domains Feeder I, LP. |
| 20200362 | G | Sequoia Capital Global Growth Fund III—Endurance Partners; Unity Software Inc.; Sequoia Capital Global Growth Fund III—Endurance Partners. |
| 20200388 | G | Advance Auto Parts, Inc.; Edward S. Lampert; Advance Auto Parts, Inc. |
| 20200390 | G | Apollo Natural Resources Partners II, L.P.; SPX Flow, Inc.; Apollo Natural Resources Partners II, L.P. |
| 20200399 | G | George Ruan; PayPal Holdings, Inc.; George Ruan. |
| 20200405 | G | E-Mart, Inc.; Endeavour Capital Fund V, L.P.; E-Mart, Inc. |
| 20200406 | G | Novacap Industries IV, L.P.; Landon Bush AIV, LLC; Novacap Industries IV, L.P. |
| 20200413 | G | Keith Campbell; William J.P. Carstarphen; Keith Campbell. |
| 20200414 | G | Reliance Steel & Aluminum Co.; Fry Steel Company; Reliance Steel & Aluminum Co. |
| 12/23/2019 | | |
| 20200365 | G | Cubic Corporation; Brandon Freeman; Cubic Corporation. |
| 20200374 | G | Atlas Corp.; Fairfax Financial Holdings Limited; Atlas Corp. |
| 20200380 | G | Angold Trust; Ribbon Communications Inc.; Angold Trust. |
| 20200386 | G | Astorg VII SLP; KKR Blue Co-Invest L.P.; Astorg VII SLP. |
| 20200387 | G | Seventh Cinven Fund (No. 1) Limited; KKR Blue Co-Invest L.P.; Seventh Cinven Fund (No. 1) Limited. |
| 20200401 | G | AF V Energy II Delaware Feeder B, L.P.; SCM Ultimate Topco, LLC; AF V Energy II Delaware Feeder B, L.P. |
| 20200411 | G | Temasek Holdings (Private) Limited; Coherus BioSciences, Inc.; Temasek Holdings (Private) Limited. |
| 20200412 | G | Monocle Acquisition Corporation; Green Equity Investors V, L.P.; Monocle Acquisition Corporation. |
| 20200419 | G | Astellas Pharma, Inc.; Audentes Therapeutics, Inc.; Astellas Pharma, Inc. |
| 12/30/2019 | | |
| 20200342 | G | Tenex Capital Partners II, L.P.; G2 Secure Staff, L.L.C.; Tenex Capital Partners II, L.P. |
| 20200417 | G | Fortum Oyj; Uniper SE; Fortum Oyj. |
| 12/31/2019 | | |
| 20200424 | G | Wheels Up Partners Holdings LLC; Delta Air Lines, Inc.; Wheels Up Partners Holdings LLC. |

FOR FURTHER INFORMATION CONTACT:

Theresa Kingsberry (202–326–3100),
Program Support Specialist, Federal
Trade Commission Premerger
Notification Office, Bureau of
Competition, Room CC–5301,
Washington, DC 20024.

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2020–00893 Filed 1–21–20; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

**Granting of Requests for Early
Termination of the Waiting Period
Under the Premerger Notification
Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration

and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
NOVEMBER 1, 2019 THRU NOVEMBER 30, 2019

11/01/2019

| | | |
|----------------|---|---|
| 20200040 | G | Vox Media, Inc.; Wasserstein Family Trust L.L.C.; Vox Media, Inc. |
| 20200049 | G | Bain Capital Fund XII, L.P.; Lite-On Technology Corporation; Bain Capital Fund XII, L.P. |
| 20200102 | G | TPG Partners VII, L.P.; CC Acquisition Co.; TPG Partners VII, L.P. |
| 20200104 | G | Munchener Ruckversicherungs-Gesellschaft AG in Munchen; Next Insurance, Inc.; Munchener Ruckversicherungs-Gesellschaft AG in Munchen. |
| 20200105 | G | LG Maverick Holdings LP; AECOM; LG Maverick Holdings LP. |
| 20200107 | G | Cerberus Institutional Partners VI, L.P.; Graeme R. Hart; Cerberus Institutional Partners VI, L.P. |
| 20200109 | G | Hull Street Energy Partners I, L.P.; General Electric Company; Hull Street Energy Partners I, L.P. |
| 20200110 | G | Hull Street Energy Partners I, L.P.; Enel S.p.A.; Hull Street Energy Partners I, L.P. |
| 20200111 | G | Genpact Limited; Rightpoint Consulting, LLC; Genpact Limited. |
| 20200112 | G | PIH Health, Inc.; Good Samaritan Hospital; PIH Health, Inc. |
| 20200113 | G | American Securities Partners VIII, L.P.; AECOM; American Securities Partners VIII, L.P. |
| 20200117 | G | WH Smith PLC; Brentwood-MRG Investors, LLC; WH Smith PLC. |
| 20200123 | G | Harvest Partners VIII, L.P.; Pamlico Capital III, L.P.; Harvest Partners VIII, L.P. |
| 20200124 | G | Harvest Partners VIII (Parallel), L.P.; Pamlico Capital III, L.P.; Harvest Partners VIII (Parallel), L.P. |
| 20200125 | G | Astorg VII SLP; Nordic Capital VIII Beta, L.P.; Astorg VII SLP. |

11/04/2019

| | | |
|----------------|---|--|
| 20200016 | G | QinetiQ Group plc; Mary Williams; QinetiQ Group plc. |
| 20200072 | G | D.E. Shaw Oculus International Fund; Emerson Electric Co.; D.E. Shaw Oculus International Fund. |
| 20200073 | G | D.E. Shaw Composite Portfolios, L.L.C.; Emerson Electric Co.; D.E. Shaw Composite Portfolios, L.L.C. |
| 20200081 | G | Kelso Investment Associates IX, L.P.; Gowrie Holdings, Inc.; Kelso Investment Associates IX, L.P. |
| 20200098 | G | General Atlantic Partners (Bermuda) IV, L.P.; Zhang Yiming; General Atlantic Partners (Bermuda) IV, L.P. |
| 20200119 | G | Todd L. Boehly; Kennedy-Wilson Holdings, Inc.; Todd L. Boehly. |

11/06/2019

| | | |
|----------------|---|--|
| 20191627 | G | Alphabet Inc.; Looker Data Sciences, Inc.; Alphabet Inc. |
|----------------|---|--|

11/08/2019

| | | |
|----------------|---|---|
| 20200121 | G | Teradyne, Inc.; Bradley Palmer; Teradyne, Inc. |
| 20200129 | G | Hess Midstream Partners LP; Hess Corporation; Hess Midstream Partners LP. |
| 20200130 | G | Hess Midstream Partners LP; GIP II Blue Holding Partnership, L.P.; Hess Midstream Partners LP. |
| 20200131 | G | Reyes Holdings, L.L.C.; Mary G. Trichell; Reyes Holdings, L.L.C. |
| 20200132 | G | Carlyle Partners VII, L.P.; THG Acquisition, LLC; Carlyle Partners VII, L.P. |
| 20200137 | G | Providence Equity Partners VIII-A L.P.; RCAF VI AIV I-A, L.P.; Providence Equity Partners VIII-A L.P. |
| 20200138 | G | Chamly Aspen Trust; Lotte Chemical Corporation; Chamly Aspen Trust. |
| 20200141 | G | New Mountain Partners IV, L.P.; Lockheed Martin Corporation; New Mountain Partners IV, L.P. |
| 20200146 | G | AG TCG HC Holdings, LP; Kent Dauten; AG TCG HC Holdings, LP. |
| 20200149 | G | Carlisle Companies Incorporated; Endeavour Capital Fund V, L.P.; Carlisle Companies Incorporated. |
| 20200156 | G | Inception Topco, Inc.; Onica Holdings LLC; Inception Topco, Inc. |
| 20200158 | G | Maurice Pinsonnault; Edgewell Personal Care Company; Maurice Pinsonnault. |

11/12/2019

| | | |
|----------------|---|--|
| 20200116 | G | Surf Ultimate Parent, L.P.; Sophos Group plc; Surf Ultimate Parent, L.P. |
| 20200155 | G | Tech Data Corporation; DLT Investment LLC; Tech Data Corporation. |

11/13/2019

| | | |
|----------------|---|--|
| 20192040 | G | Lehigh Valley Health Network, Inc.; Emil J. Dilorio; Lehigh Valley Health Network, Inc. |
| 20200120 | G | PGGM Cooperatie U.A.; Electricite de France S.A.; PGGM Cooperatie U.A. |
| 20200134 | G | DTE Energy Company; M5 Midstream LLC; DTE Energy Company. |
| 20200135 | G | DTE Energy Company; Indigo Natural Resources LLC; DTE Energy Company. |
| 20200152 | G | One Rock Capital Partners II, LP; Innophos Holdings, Inc.; One Rock Capital Partners II, LP. |
| 20200159 | G | Quantum Energy Partners V, LP; Parsley Energy, Inc.; Quantum Energy Partners V, LP. |
| 20200160 | G | Parsley Energy, Inc.; Quantum Energy Partners V, LP; Parsley Energy, Inc. |
| 20200161 | G | Olympus Growth Fund VII, L.P.; BBH Capital Partners V, L.P.; Olympus Growth Fund VII, L.P. |

11/14/2019

| | | |
|----------------|---|---|
| 20200133 | G | Wendel-Participations SE; Safeguard Parent, Inc.; Wendel-Participations SE. |
|----------------|---|---|

11/15/2019

| | | |
|----------------|---|--|
| 20190706 | G | Bristol-Myers Squibb Company; Celgene Corporation; Bristol-Myers Squibb Company. |
| 20200148 | G | The Sisters of Third Order of Saint Francis, Inc.; Little Company of Mary Sisters-USA; The Sisters of Third Order of Saint Francis, Inc. |

EARLY TERMINATIONS GRANTED—Continued
NOVEMBER 1, 2019 THRU NOVEMBER 30, 2019

11/19/2019

| | | |
|----------------|---|---|
| 20190279 | G | Ares Energy Investors Fund V, L.P.; BP p.l.c.; Ares Energy Investors Fund V, L.P. |
|----------------|---|---|

11/20/2019

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|----------------|---|--|
| 20200136 | G | Signify N.V.; Eaton Corporation plc; Signify N.V. |
| 20200154 | G | EnCap Flatrock Midstream Fund IV, L.P.; GSO Capital Solutions Fund II AIV-2 LP; EnCap Flatrock Midstream Fund IV, L.P. |
| 20200165 | G | K. Rupert Murdoch; Fox Corporation; K. Rupert Murdoch. |
| 20200167 | G | Proofpoint, Inc.; Observe IT Ltd.; Proofpoint, Inc. |
| 20200171 | G | American Securities Partners VIII, L.P.; Rockwood Holding Company LLC; American Securities Partners VIII, L.P. |
| 20200172 | G | Novartis AG; Pliant Therapeutics, Inc.; Novartis AG. |
| 20200175 | G | KKR Sigma Aggregator L.P.; Alexandros Katsiotis; KKR Sigma Aggregator L.P. |
| 20200176 | G | Peppertree Capital Fund VIII QP, LP; AT&T Inc.; Peppertree Capital Fund VIII QP, LP. |
| 20200177 | G | KKR Sigma Aggregator L.P.; Elli Drakopoulou; KKR Sigma Aggregator L.P. |
| 20200178 | G | David A. Duffield; ScoutRFP, Inc.; David A. Duffield. |
| 20200184 | G | Lee Ji-Hoon; Riverstone Global Energy and Power Fund VI, L.P.; Lee Ji-Hoon. |
| 20200185 | G | Kim Young Gwan; Riverstone Global Energy and Power Fund VI, L.P.; Kim Young Gwan. |
| 20200186 | G | Samtan Co., Ltd.; Riverstone Global Energy and Power Fund VI, L.P.; Samtan Co., Ltd. |
| 20200191 | G | Roger S. Penske; Hulman & Company; Roger S. Penske. |
| 20200194 | G | GS TruckLite Holdings, LLC; TL Lighting Holdings, LLC; GS TruckLite Holdings, LLC. |
| 20200195 | G | Wells Fargo & Company; Golden Gate Capital Opportunity Fund, L.P.; Wells Fargo & Company. |
| 20200196 | G | Markel Corporation; VSC Fire & Security, Inc.; Markel Corporation. |
| 20200197 | G | Rhone Partners V L.P.; Hudson's Bay Company; Rhone Partners V L.P. |
| 20200198 | G | Rockland PJM Partners, LP; Rockland Powers Partners III, LP; Rockland PJM Partners, LP. |
| 20200199 | G | SBHC Holdings LLC; Strategic Behavioral Health, LLC; SBHC Holdings LLC. |
| 20200205 | G | Clayton, Dubilier & Rice Fund X, L.P.; Anixter International Inc.; Clayton, Dubilier & Rice Fund X, L.P. |

11/22/2019

| | | |
|----------------|---|--|
| 20200169 | G | Gulf Pacific Power, LLC; Enel S.p.A; Gulf Pacific Power, LLC. |
| 20200170 | G | Gulf Pacific Power, LLC; General Electric Company; Gulf Pacific Power, LLC. |
| 20200179 | G | Dexter Goei; Patrick Drahi; Dexter Goei. |
| 20200200 | G | Wind Point Partners IX-A L.P.; Ruben & Guadalupe Gutierrez; Wind Point Partners IX-A L.P. |
| 20200201 | G | Olympus Growth Fund VII, L.P.; Adecco Group AG; Olympus Growth Fund VII, L.P. |
| 20200207 | G | Meritage Fund LLC; Warburg Pincus Private Equity XI, L.P.; Meritage Fund LLC. |
| 20200208 | G | Golden Gate Capital Opportunity Fund, L.P.; The Independent Order of Foresters; Golden Gate Capital Opportunity Fund, L.P. |
| 20200210 | G | Hg Saturn A L.P.; General Atlantic Partners (Bermuda) III, L.P.; Hg Saturn A L.P. |
| 20200235 | G | The Medical Society of South Carolina; CareAlliance Health Services d/b/a RSFH; The Medical Society of South Carolina. |
| 20200236 | G | Bon Secours Mercy Ministries; CareAlliance Health Services d/b/a RSFH; Bon Secours Mercy Ministries. |
| 20200251 | G | Vista Foundation Fund III, L.P.; Sonatype, Inc.; Vista Foundation Fund III, L.P. |

11/26/2019

| | | |
|----------------|---|---|
| 20200221 | G | FR XIV Charlie AIV, L.P.; TriMas Corporation; FR XIV Charlie AIV, L.P. |
| 20200231 | G | Vistria Fund II, LP; Academic Partnerships, LLC; Vistria Fund II, LP. |
| 20200243 | G | Mode Investor, LP; Comvest Investment Partners IV, L.P.; Mode Investor, LP. |
| 20200249 | G | Henkel AG & Co. KGaA; Ares Corporate Opportunities Fund IV, L.P.; Henkel AG & Co. KGaA. |

11/29/2019

| | | |
|----------------|---|--|
| 20192077 | G | Outotec Oyj; Metso Corporation; Outotec Oyj. |
| 20200168 | G | Platinum Equity Capital Partners International V (Cayman); Cision Ltd.; Platinum Equity Capital Partners International V (Cayman). |
| 20200193 | G | Amgen Inc.; BeiGene, Ltd.; Amgen Inc. |
| 20200220 | G | Harvest Partners VIII, L.P.; Greenbriar Equity Fund III, L.P.; Harvest Partners VIII, L.P. |
| 20200222 | G | Harvest Partners VIII (Parallel), L.P.; Greenbriar Equity Fund III, L.P.; Harvest Partners VIII (Parallel), L.P. |
| 20200233 | G | Olympus Growth Fund VII, L.P.; John J. Burns, Jr. Marital A Trust; Olympus Growth Fund VII, L.P. |
| 20200237 | G | Gemspring Capital Fund I, LP; Stargazer Founders, Inc.; Gemspring Capital Fund I, LP. |
| 20200248 | G | Gryphon Partners V, L.P.; Tyree & D' Angelo Partners Fund I LP; Gryphon Partners V, L.P. |

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry (202–326–3100), Program Support Specialist, Federal Trade Commission Premierger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024.

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2020–00894 Filed 1–21–20; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0290; Docket No. 2019–0001; Sequence No. 15]

Information Collection; System for Award Management Registration Requirements for Financial Assistance Recipients

AGENCY: Office of Systems Management, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding the pre-award registration requirements for Prime Grant Recipients. The title of the approved information collection is System for Award Management Registration Requirements for Prime Grant Recipients (OMB Control Number 3090–0290). The updated information collection title is based on the Office of Management and Budget’s (OMB) proposed expansion of SAM registration requirements to include all entities that receive financial assistance.

DATES: Submit comments on or before March 23, 2020.

ADDRESSES: Submit comments identified by “Information Collection 3090–0290, System for Award Management Registration Requirements for Financial Assistance Recipients” by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0290. Select the link “Comment Now” that corresponds with “Information Collection 3090–0290, System for Award Management Registration Requirements for Financial Assistance Recipients”. Follow the

instructions provided on the screen. Please include your name, company name (if any), and “Information Collection 3090–0290, System for Award Management Registration Requirements for Financial Assistance Recipients” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0290.

Instructions: Please submit comments only and cite Information Collection 3090–0290, System for Award Management Registration Requirements for Financial Assistance Recipients, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Goode, Program Manager, IAE Outreach and Stakeholder Engagement Division, at telephone number 703–605–2175; or via email at nancy.goode@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requires information necessary for prime applicants and recipients, excepting individuals, of Federal financial assistance to register in the System for Award Management (SAM) and maintain an active SAM registration with current information at all times during which they have an active Federal award or an application or plan under consideration by an agency pursuant to 2CFR Subtitle A, Chapter I, and Part 25 (75 FR 5672). This facilitates prime awardee reporting of sub-award and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252). This information collection requires that all prime financial assistance awardees, subject to reporting under the Transparency Act register and maintain their registration in SAM.

This information collection is being amended to meet a statutory requirement of the National Defense Authorization Act (NDAA) of FY 2013. The NADA of 2013 requires that the Federal Awardee Performance and

Integrity Information System (FAPIS)(currently located in SAM) include information on a non-Federal entity’s parent, subsidiary, or successor entities. Applicants will need to provide information in SAM on their immediate and highest level owner as well as predecessors that have been awarded a Federal contract, grant, or cooperative agreement within the last three years. Additionally, the information collection is being amended to increase transparency regarding Federal spending and to support implementation of the Digital Accountability and Transparency Act of 2014 (DATA ACT).

OMB proposes to expand the requirement to register in SAM beyond grants, cooperative agreements, and contracts, to entities that receive financial assistance such as loans, insurance, and direct appropriations. This information collection requirement is included in OMB’s proposed revision to guidance in 2CFR Subtitle A, Chapter I, and Parts 25, 170, and 200.

B. Annual Reporting Burden

Respondents: 172,084.

Responses per Respondent: 1.

Total annual responses: 172,084.

Hours per Response: 2.5.

Total Burden Hours: 430,210.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the System for Award Management Registration Requirements for Financial Assistance Recipients, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0290, System for Award Management Registration Requirements for Financial Assistance Recipients, in all correspondence.

Dated: December 27, 2019.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019-28347 Filed 1-21-20; 8:45 am]

BILLING CODE 6820-WY-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Mixed Methods Review—Integrating Palliative Care With Chronic Disease Management in Ambulatory Care

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Mixed Methods Review—Integrating Palliative Care with Chronic Disease Management in Ambulatory Care*, which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before 30 days after date of publication in the **Federal Register**.

ADDRESSES:

Email Submissions: epc@ahrq.hhs.gov.

Print Submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Jenae Benms, Telephone: 301-427-1496 or Email: epc@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for Mixed Methods Review—Integrating Palliative Care with Chronic

Disease Management in Ambulatory Care. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on *Mixed Methods Review—Integrating Palliative Care with Chronic Disease Management in Ambulatory Care*, including those that describe adverse events. The entire research protocol is available online at: <https://effectivehealthcare.ahrq.gov/products/palliative-care-integration/protocol>.

This is to notify the public that the EPC Program would find the following information on *Mixed Methods Review—Integrating Palliative Care with Chronic Disease Management in Ambulatory Care* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please indicate whether results are available on *ClinicalTrials.gov* along with the *ClinicalTrials.gov* trial number.
- For completed studies that do not have results on *ClinicalTrials.gov*, a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- A list of ongoing studies that your organization has sponsored for this indication. In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or

information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: <https://www.effectivehealthcare.ahrq.gov/email-updates>.

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

Five questions about the integration of palliative care in ambulatory care will be addressed:

1. How can we identify those patients who could benefit from palliative care in ambulatory care settings?
2. What educational resources are available for patients and caregivers in ambulatory care about palliative care?
3. What palliative care decision making tools are available for clinicians, patients and caregivers in ambulatory care?
4. What educational resources are available for non-palliative care clinicians about palliative care in ambulatory settings?
5. What are the models for integrating palliative care into ambulatory settings?

For each of these questions, three parts will be addressed:

- What is available? (part a of questions)
- What is the effectiveness? (part b of questions)
- How is it implemented? (part c of questions)

The following are the Key Questions to be addressed in this mixed methods review:

KQ 1:

KQ1a. What prediction models, tools, triggers and guidelines and position statements are available about how to identify when and which patients with serious life-threatening chronic illness or conditions in ambulatory settings could benefit from palliative care?

KQ1b. What is the effectiveness of prediction models, tools and triggers for identifying when and which patients with serious life-threatening chronic illness or conditions in ambulatory settings could benefit from palliative care?

KQ1c. How have prediction models, tools and triggers for identifying when

and which patients with serious life-threatening chronic illness or conditions in ambulatory settings could benefit from palliative care been implemented? What is the evidence for how, when and for which patients they could best be implemented in care?

KQ 2:

KQ2a. What educational materials and resources are available about palliative care and palliative care options for patients with serious life-threatening chronic illness or conditions in ambulatory settings and their caregivers?

KQ2b. What is the effectiveness of educational materials and resources about palliative care and palliative care options for patients with serious life-threatening chronic illness or conditions and their caregivers in ambulatory settings?

KQ2c. How have educational materials and resources about palliative care and palliative care options for patients with serious life-threatening chronic illness or conditions and their caregivers in ambulatory settings been implemented? What is the evidence for how, when and for which patients and caregivers they could best be implemented in care?

KQ 3:

KQ3a. What palliative care shared decision-making tools are available for patients with serious life-threatening chronic illness or conditions in ambulatory settings and their caregivers?

KQ3b. What is the effectiveness of palliative care shared decision-making tools for patients with serious life-threatening chronic illness or conditions in ambulatory settings and their caregivers?

KQ3c. How have palliative care shared decision-making tools been implemented for patients with serious life-threatening chronic illness or conditions in ambulatory settings and their caregivers? What is the evidence for how, when and for which patients and caregivers they could best be implemented in care?

KQ 4:

KQ4a. What palliative care training and educational materials are available for non-palliative care clinicians caring for patients with serious life-threatening chronic illness or conditions in ambulatory settings?

KQ4b. What is the effectiveness of palliative care training and educational materials (with or without other intervention components) for non-palliative care clinicians caring for patients with serious life-threatening chronic illness or conditions in ambulatory settings?

KQ4c. How have palliative care training and educational materials (with or without other intervention components) for non-palliative care clinicians caring for patients with serious life-threatening chronic illness or conditions in ambulatory settings been implemented? What is the evidence for how, when and for which clinicians they could best be implemented in care?

KQ 5:

KQ5a. What models (*i.e.*, stepped care, consultative care, shared care, collaborative care, coaching, integrating social workers into practice, and palliative care approaches provided by non-palliative care specialists) for integrating palliative care have been developed for patients with serious life-threatening chronic illness or conditions in ambulatory settings?

KQ5b. What is the effectiveness of models (*i.e.*, stepped care, consultative care, shared care, collaborative care, coaching, integrating social workers into practice, and palliative care approaches provided by non-palliative care specialists) or multimodal interventions for integrating palliative care for patients with serious life-threatening chronic illness or conditions in ambulatory settings?

KQ5c. What are components of models for integrating palliative care in ambulatory settings? What models have been implemented for key subpopulations? What components and characteristics of these models contribute to their effective implementation? What is the evidence for how, when and for which patients they could best be implemented in care?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

• **Population(s):**

- Adults age 18 or older with serious life-threatening chronic illness or conditions (other than those adults only with cancer) and their caregivers, being seen in ambulatory settings (KQ 1,2,3,5)
- Clinicians practicing in ambulatory settings listed below (KQ 4)

• **Interventions:**

- **KQ1:** Prediction models, tools or triggers to identify patients for palliative care in ambulatory settings
- **KQ2:** Educational materials and resources for patients and/or caregivers about palliative care in ambulatory settings
- **KQ3:** Palliative care shared decision-making tools and resources for clinicians and patients and/or caregivers in ambulatory

settings

- **KQ4:** Palliative care training or educational materials for non-palliative care clinicians in ambulatory settings
- **KQ5:** Models for integrating palliative care in ambulatory settings
- **Comparators (for part (b) KQ):** Comparators between:
 - **KQ1:** Prediction models, tools or triggers to identify patients for palliative care in ambulatory settings
 - **KQ2:** Educational materials and resources for patients and/or caregivers about palliative care in ambulatory settings
 - **KQ3:** Palliative care shared decision-making tools and resources for clinicians and patients and/or caregivers in ambulatory settings
 - **KQ4:** Palliative care training or educational materials for clinicians in ambulatory settings
 - **KQ5:** Models for integrating palliative care or multimodal interventions in ambulatory settings
 - As well as with usual care for all KQs
- **Outcomes (for part (b) KQ):**
 - Intermediate (Excludes clinician self-report):
 - Knowledge (clinicians, patients, caregivers) (KQ2, KQ4)
 - Awareness (clinicians, patients, caregivers) (KQ2, KQ4)
 - Skills (clinicians) (KQ4)
 - Final (All apply to all KQ) (In hierarchy from patient-centered to clinician to health system. All patient or caregiver-reported outcomes must be measured by a validated instrument. All outcomes must relate to components of care relevant to serious, life-threatening chronic illness or conditions.)
 - Patient or caregiver satisfaction
 - Patient or caregiver health-related quality of life
 - Patient or caregiver symptoms of depression or anxiety or psychological well-being
 - Caregiver burden, caregiver impact or caregiver strain
 - Patient symptoms or symptom burden (includes multidimensional symptom tools and key symptoms of pain, dyspnea, fatigue). This must include patient-reported symptom measurement (or caregiver-reported for patients unable to report).
 - Concordance between patient preferences for care and care received
 - Clinician job satisfaction or burnout, perceptions of teamwork

- Healthcare utilization (use and length of hospice care, hospitalizations, advance directive documentation) and costs and resource use (use of outpatient clinician services, including palliative care)
- Adverse effects
 - Medication side effects
 - Dropouts
- *Timing*
 - Any timing
- *Settings*
 - Ambulatory primary and specialty care, including geriatrics, nephrology, pulmonology, cardiology, and neurology
 - U.S.-based studies, as systems of care differ in other countries

Dated: January 15, 2020.

Virginia L. Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020-00903 Filed 1-21-20; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[0Day-20-0006; Docket No. CDC-2019-0118]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on Statements in Support of Application of Waiver of Inadmissibility (0920-0006). CDC uses the information collected in 0920-0006 to review Class A medical waiver applications for prospective

immigrants to the United States. CDC assists DHS/USCIS in determining whether or not a prospective immigrant with a Class A mental health designation may be admitted into the United States.

DATES: CDC must receive written comments on or before March 23, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2019-0118 by any of the following methods:

- *Federal eRulemaking Portal:* *Regulations.gov.* Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Statements in Support of Application of Waiver of Inadmissibility (OMB Control No. 0920-0006 Exp. 6/30/2020)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 212(a)(1) of the Immigration and Nationality Act states that aliens with specific health related conditions are ineligible for admission into the United States. The Attorney General may waive application of this inadmissibility on health-related grounds if an application for waiver is filed and approved by the consular office considering the application for visa. CDC uses this application primarily to collect information to establish and maintain records of waiver applicants in order to notify the U.S. Citizenship and Immigration Services when terms, conditions and controls imposed by waiver are not met.

The purpose of this Revision is to remove information collections for form 4.422-1a, because CDC does not receive information about the evaluation report of an applicant who received a waiver. This results in a reduction of 67 burden hours. CDC requests approval for 33 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|--------------------|-------------|-----------------------|------------------------------------|--|--------------------|
| Physician | CDC 4.422-1 | 200 | 1 | 10/60 | 33 |
| Total ..... | ..... | ..... | ..... | ..... | 33 |

Jeffrey M. Zirger,
*Lead, Information Collection Review Office,
 Office of Scientific Integrity, Office of Science,
 Centers for Disease Control and Prevention.*
 [FR Doc. 2020-01051 Filed 1-21-20; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970-0492]

Submission for OMB Review; Community Services Block Grant Annual Report

AGENCY: Office of Community Services; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration of Children and Families (ACF), Office of Community Services (OCS) is requesting a three-year extension with minor

changes of the Community Services Block Grant (CSBG) Annual Report (OMB No.: 0970-0492, expiration 1/31/2020). This request will support the currently utilized CSBG Annual Report, comprised of Modules 1-4, and incorporates performance management.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@*

acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Module 1 includes minor edits to align with the updated, and OMB approved, CSBG State Plan. Module 2, Module 3, and Module 4 include only technical and grammatical updates for ease and clarity of current reporting. Copies of the proposed collection of information can be obtained by visiting: *http://www.acf.hhs.gov/programs/ocs/programs/csbg*.

Respondents: State governments, including the District of Columbia and the Commonwealth of Puerto Rico, and U.S. territories and CSBG eligible entities (Community Action Agencies).

Annual Burden Estimates:

| Instrument | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual burden hours |
|--|------------------------------|---|-----------------------------------|---------------------|
| CSBG Annual Report (States) | 52 | 1 | 198 | 10,296 |
| CSBG Annual Report (Eligible Entities) | 1,009 | 1 | 697 | 703,273 |

Estimated Total Annual Burden Hours: 713,569.

Authority: 112 Stat. 2729; 42 U.S.C. 9902(2).

Mary B. Jones,
ACF/OPRE Certifying Officer.
 [FR Doc. 2020-00928 Filed 1-21-20; 8:45 am]
BILLING CODE 4184-27-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2018-E-3053 and FDA-2018-E-4226]

Determination of Regulatory Review Period for Purposes of Patent Extension; MAVYRET

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for MAVYRET and is publishing this notice of that determination as required by law. FDA has made the

determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by March 23, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 20, 2020. See "Petitions" in the

SUPPLEMENTARY INFORMATION section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 23, 2020. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 23, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA-2018-E-3053 and FDA-2018-E-4226 for "Determination of Regulatory

Review Period for Purposes of Patent Extension; MAVYRET." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product MAVYRET (a fixed dose combination of glecaprevir, a hepatitis C virus (HCV) NS3/4A protease inhibitor, and pibrentasvir, an HCV NS5A inhibitor). MAVYRET is indicated for treatment of patients with chronic HCV genotype 1, 2, 3, 4, 5 or 6 infection without cirrhosis and with compensated cirrhosis (Child-Pugh A). MAVYRET is also indicated for the treatment of adult patients with HCV genotype 1 infection, who previously have been treated with a regimen containing an HCV NS5A inhibitor or an NS3/4A protease inhibitor, but not both. Subsequent to this approval, the USPTO received patent term restoration applications for MAVYRET (U.S. Patent Nos. 8,937,150 and 9,586,978) from AbbVie, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated May 13, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the

approval of MAVYRET represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MAVYRET is 1,725 days. Of this time, 1,492 days occurred during the testing phase of the regulatory review period, while 233 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 14, 2012. FDA has verified the applicant's claim that the date the investigational new drug applications became effective was on November 12, 2012.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 14, 2016. FDA has verified the applicant's claim that the new drug application (NDA) for MAVYRET (NDA 209394) was initially submitted on December 14, 2016.

3. *The date the application was approved:* August 3, 2017. FDA has verified the applicant's claim that NDA 209394 was approved on August 3, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 0 days or 150 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent

applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 15, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00936 Filed 1–21–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Reconciliation Tool, OMB No. 0915–0342—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than March 23, 2020.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting

information, please include the ICR title for reference.

Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Reconciliation Tool OMB No. 0915–0342—Extension.

Abstract: The THCGME program, authorized by Section 340H of the Public Health Service Act, was established by Section 5508 of Public Law (Pub. L.) 111–148. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) provided continued funding for the THCGME Program for fiscal years 2018 and 2019 and the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) extends funding for the THCGME program until May 22, 2020.

The THCGME program awards payment for both direct and indirect expenses to support training for primary care residents in community-based ambulatory patient care settings. Direct medical expense payments are designed to compensate eligible THC for those expenses directly associated with resident training, while indirect medical expense payments are intended to compensate for the additional costs of training residents in such programs.

Need and Proposed Use of the Information: THCGME program payments are prospective payments, and the statute provides for a reconciliation process, through which overpayments may be recouped and underpayments may be adjusted at the end of the fiscal year. This data collection instrument gathers information relating to the number of resident full-time equivalents in THC training programs in order to reconcile payments for both direct and indirect expenses.

Likely Respondents: THCGME program award recipients.

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 |
|----------------------------------|-----------------------|------------------------------------|-----------------|--|--------------------|
| THCGME Reconciliation Tool | 58 | 1 | 58 | 2 | 116 |
| Total | 58 | ..... | 58 | ..... | 116 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020-00986 Filed 1-21-20; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

**Agency Information Collection Activities: Proposed Collection: Public Comment Request Information
Collection Request Title: Advanced Nursing Education Workforce (ANEW), OMB No. 0915-0375 Extension**

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than March 23, 2020.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the

proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443-1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Advanced Nursing Education Workforce (ANEW) Program-Specific Data Collection Forms OMB No. 0915-0375—Extension.

Abstract: HRSA provides advanced education nursing training grants to educational institutions to increase the numbers of advanced education nurses through the ANEW Program. The ANEW Program is authorized by Section 811 of the Public Health Service Act (42 U.S.C. 296j), as amended. This request is to extend the use of ANEW Program-Specific forms, specifically Tables #1 and #2. There are no proposed changes to these tables.

ANEW Table #1 collects information on the types of practice settings where graduates, who received ANEW support as students, are currently employed. The data on graduates' employment practice settings demonstrate the distribution of specialties, *i.e.*, nurse practitioners, clinical nurse specialists and nurse midwives, who are practicing in rural, underserved, public health nursing, and Health Professional Shortage Areas (HPSA) practice settings. ANEW Table #2 requests information on the projected number of primary care advanced practice registered nursing student enrollees/trainees who will receive traineeship support for each upcoming budget year over the entire project period. This data provides a baseline for comparison to data collected on the numbers of students/enrollees/trainees supported that are reported on the Annual Performance Reports.

Need and Proposed Use of the Information: ANEW Program-Specific Table #1 captures data on the number of graduates of the academic partner applicant who received HRSA support and are currently employed in rural

areas, undeserved areas, public health nursing, and HPSA practice settings. The graduate data collected measure the impact of the ANEW Program in meeting the legislative and program goals. ANEW Program-Specific Table #2 collects information on the projected number of students/enrollees to receive traineeship support each budget year of the project period and provides a baseline for student/enrollee support that is reported in the Annual Performance Reports. Collecting this data assists HRSA in carrying out the most impactful program and ensuring resources are used responsibly.

Likely Respondents: Likely respondents will be current ANEW awardees, who will submit the data tables as part of a Noncompeting Continuation progress report, and applicants for the ANEW program, including schools of nursing, nursing centers, academic health centers, state or local governments, and other public or private nonprofit entities determined appropriate by the Secretary that are accredited to carry out primary care nurse practitioner and nurse midwifery programs by a national nurse education accrediting agency recognized by the Secretary of the U.S. Department of Education. The school must be located in one of the 50 U.S. States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

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 |
|---|-----------------------|------------------------------------|-----------------|--|--------------------|
| ANEW Application including the ANEW Program-Specific Tables and Attachments | 236 | 1 | 236 | 7 | 1,652 |
| | 236 | ..... | 236 | ..... | 1,652 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020-00941 Filed 1-21-20; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Purchased/Referred Care Delivery Area Designations for the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe

AGENCY: Indian Health Service, HHS.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Indian Health Service (IHS) is establishing the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) (formerly Contract Health Service Delivery Area or CHSDA) for six newly recognized Tribes: The Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

DATES: This notice is effective as of February 21, 2020.

ADDRESSES: This notice can be found at <https://www.federalregister.gov>. Written requests for information or comments submitted by postal mail or delivery

should be addressed to: CDR John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, MD 20857, (301) 443-0609 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The IHS currently provides services under regulations in effect on September 15, 1987, and republished in the Code of Federal Regulations (CFR) at 42 CFR part 136, subparts A–C. When Tribes are recognized under Federal law, either Congress legislatively designates counties to serve as PRCDAs, or the Director, IHS, exercises reasonable administrative discretion to designate PRCDAs to effectuate the intent of Congress for these Tribes. The Director, IHS, publishes a notice in the **Federal Register** (FR) when there are revisions or updates to the list of PRCDAs, including the designation of PRCDAs for newly recognized Tribes.

At 42 CFR part 136 subpart C, a PRCDA is defined as the geographic area within which Purchased/Referred Care (PRC) will be made available by the IHS to members of an identified Indian community who reside in the area. The regulations provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22(a)(6)). Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed but not available at an IHS or Tribal facility are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

Under the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 (Recognition

Act), Public Law 115–121, the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe were officially recognized as Indian Tribes within the meaning of Federal law. The Recognition Act sets forth service areas for each of the six newly recognized Tribes, for the purpose of the delivery of Federal services to Tribal members. Four of these six service areas include specific references to counties and independent cities in the state of Virginia. IHS is establishing four PRCDA in this notice based upon those specific references. The remaining two service areas enumerated by Congress in the Recognition Act do not specify either counties or independent cities. Instead, Congress has indicated a mileage radius for those two service areas. Since IHS establishes PRCDA for the administration of PRC by county, IHS has interpreted this language to mean all counties within or intersected by the radius specified by Congress in the Recognition Act, as well as the independent cities within the contiguous area formed by those counties.

The purpose of this FR notice is to notify the public of the establishment of the six newly recognized Tribes' PRCDA, consistent with the Congressional intent expressed in the Recognition Act. The Tribes' PRCDA are designated as follows:

Chickahominy Indian Tribe—New Kent County, James City County, Charles City County, and Henrico County, Virginia.

Chickahominy Indian Tribe—Eastern Division—New Kent County, James City County, Charles City County, and Henrico County, Virginia.

Upper Mattaponi Tribe—Richmond County, Middlesex County, Essex County, King and Queen County, King William County, New Kent County, Hanover County, Caroline County, Henrico County, Charles City County,

James City County, and the independent city of Richmond, Virginia.

Rappahannock Tribe, Inc.—King and Queen County, Caroline County, Essex County, and King William County, Virginia.

Monacan Indian Nation—Amherst County, Nelson County, Albemarle County, Buckingham County, Appomattox County, Campbell County, Bedford County, Botetourt County, Rockbridge County, Augusta County, and the independent cities of Lynchburg, Lexington, Buena Vista, Staunton, Waynesboro, and Charlottesville, Virginia.

Nansemond Indian Tribe—The independent cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Virginia.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation but reside within a PRCDA must be either members of the Tribe or maintain close economic and social ties with the Tribe. In this case, the Tribes estimated the eligible user populations to be as follows: 654 enrolled Chickahominy members; 59 enrolled Chickahominy Eastern Division members; 202 enrolled Upper Mattaponi

members; 202 enrolled Rappahannock members; 881 enrolled Monacan members; 95 enrolled Nansemond members. The financial resources required to meet the immediate needs of the Tribal members residing in the PRCDA were determined by the IHS, through consultation with the individual Tribes, and will be placed in the Nashville Area PRC budget.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act.

PURCHASED/REFERRED CARE DELIVERY AREAS

| Tribe/reservation | County/state |
|--|--|
| AK Chin Indian Community | Pinal, AZ. |
| Alabama-Coushatta Tribes of Texas | Polk, TX. ¹ |
| Alaska | Entire State. ² |
| Arapahoe Tribe of the Wind River Reservation, Wyoming | Hot Springs, WY, Fremont, WY, Sublette, WY. |
| Aroostook Band of Micmacs | Aroostook, ME. ³ |
| Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana. | Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT. |
| Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin. | Ashland, WI, Iron, WI. |
| Bay Mills Indian Community, Michigan | Chippewa, MI. |
| Blackfeet Tribe of the Blackfeet Indian Reservation of Montana | Glacier, MT, Pondera, MT. |
| Brigham City Intermountain School Health Center, Utah | Permanently closed on May 17, 1984. ⁴ |
| Burns Paiute Tribe | Harney, OR. |
| California | Entire State, except for the counties listed in the footnote. ⁵ |
| Catawba Indian Nation (AKA Catawba Tribe of South Carolina) | All Counties in SC, ⁶ Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC. |
| Cayuga Nation | Alleghany, NY, ⁷ Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA. |
| Chickahominy Indian Tribe | New Kent, VA, James City, VA, Charles City, VA, Henrico, VA. ⁸ |
| Chickahominy Indian Tribe—Eastern Division | New Kent, VA, James City, VA, Charles City, VA, Henrico, VA. ⁹ |
| Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota. | Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD. |
| Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana | Chouteau, MT, Hill, MT, Liberty, MT. |
| Chitimacha Tribe of Louisiana | St. Mary Parish, LA. |
| Cocopah Tribe of Arizona | Yuma, AZ, Imperial, CA. |
| Coeur D'Alene Tribe | Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA. |
| Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California. | La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ. |
| Confederated Salish and Kootenai Tribes of the Flathead Reservation | Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT. |
| Confederated Tribes and Bands of the Yakama Nation | Klickitat, WA, Lewis, WA, Skamania, WA, ¹⁰ Yakima, WA. |
| Confederated Tribes of Siletz Indians of Oregon | Benton, OR, ¹¹ Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yamhill, OR. |
| Confederated Tribes of the Chehalis Reservation | Grays Harbor, WA, Lewis, WA, Thurston, WA. |
| Confederated Tribes of the Colville Reservation | Chelan, WA, ¹² Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA. |
| Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians | Coos, OR, ¹³ Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR. |
| Confederated Tribes of the Goshute Reservation, Nevada and Utah | Nevada, Juab, UT, Toole, UT. |
| Confederated Tribes of the Grand Ronde Community of Oregon | Marion, OR, Multnomah, OR, Polk, OR, ¹⁴ Tillamook, OR, Washington, OR, Yamhill, OR. |
| Confederated Tribes of the Umatilla Indian Reservation | Umatilla, OR, Union, OR. |
| Confederated Tribes of the Warm Springs Reservation of Oregon | Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR. |
| Coquille Indian Tribe | Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR. |
| Coushatta Tribe of Louisiana | Allen Parish, LA, the city limits of Elton, LA. ¹⁵ |
| Cow Creek Band of Umpqua Tribe of Indians | Coos, OR, ¹⁶ Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR. |
| Cowlitz Indian Tribe | Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Peirce, WA, Skamania, WA, Thurston, WA, Columbia, OR, ¹⁷ Kittitas, WA, Wahkiakum, WA. |
| Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota | Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD. |
| Crow Tribe of Montana | Big Horn, MT, Carbon, MT, Treasure, MT, ¹⁸ Yellowstone, MT, Big Horn, WY, Sheridan, WY. |
| Eastern Band of Cherokee Indians | Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC. |
| Eastern Shoshone Tribe of the Wind River Reservation, Wyoming | Hot Springs, WY, Fremont, WY, Sublette, WY. |

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|---|
| Flandreau Santee Sioux Tribe of South Dakota | Moody, SD. |
| Forest County Potawatomi Community, Wisconsin | Forest, WI, Marinette, WI, Oconto, WI. |
| Fort Belknap Indian Community of the Fort Belknap Reservation of Montana. | Blaine, MT, Phillips, MT. |
| Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon. | The entire State of Nevada, Malheur, OR. |
| Fort McDowell Yavapai Nation, Arizona | Maricopa, AZ. |
| Fort Mojave Indian Tribe of Arizona, California and Nevada | The entire State of Nevada, Mohave, AZ, San Bernardino, CA. |
| Gila River Indian Community of the Gila River Indian Reservation, Arizona. | Maricopa, AZ, Pinal, AZ. |
| Grand Traverse Band of Ottawa and Chippewa Indians, Michigan | Antrim, MI, ¹⁹ Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI. |
| Hannahville Indian Community, Michigan | Delta, MI, Menominee, MI. |
| Haskell Indian Health Center | Douglas, KS, ²⁰ |
| Havasupai Tribe of the Havasupai Reservation, Arizona | Coconino, AZ. |
| Ho-Chunk Nation of Wisconsin | Adams, WI, ²¹ Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI. |
| Hoh Indian Tribe | Jefferson, WA. |
| Hopi Tribe of Arizona | Apache, AZ, Coconino, AZ, Navajo, AZ. |
| Houlton Band of Maliseet Indians | Aroostook, ME. ²² |
| Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona | Coconino, AZ, Mohave, AZ, Yavapai, AZ. |
| Iowa Tribe of Kansas and Nebraska | Brown, KS, Doniphan, KS, Richardson, NE. |
| Jamestown S'Klallam Tribe | Clallam, WA, Jefferson, WA. |
| Jena Band of Choctaw Indians | Grand Parish, LA, ²³ LaSalle Parish, LA, Rapides, LA. |
| Jicarilla Apache Nation, New Mexico | Archuleta, CO, Rio Arriba, NM, Sandoval, NM. |
| Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona. | Coconino, AZ, Mohave, AZ, Kane, UT. |
| Kalispel Indian Community of the Kalispel Reservation | Pend Oreille, WA, Spokane, WA. |
| Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo). | Sandoval, NM, Santa Fe, NM. |
| Keweenaw Bay Indian Community, Michigan | Baraga, MI, Houghton, MI, Ontonagon, MI. |
| Kickapoo Traditional Tribe of Texas | Maverick, TX. ²⁴ |
| Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas | Brown, KS, Jackson, KS. |
| Klamath Tribes | Klamath, OR. ²⁵ |
| Koi Nation of Northern California (formerly known as Lower Lake Rancheria, California). | Lake, CA, Sonoma, CA. ²⁶ |
| Kootenai Tribe of Idaho | Boundary, ID. |
| Lac Courte Oreilles Band of Superior Chippewa Indians of Wisconsin .. | Sawyer, WI. |
| Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin. | Iron, WI, Oneida, WI, Vilas, WI. |
| Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan | Gogebic, MI. |
| Little River Band of Ottawa Indians, Michigan | Kent, MI, ²⁷ Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI. |
| Little Traverse Bay Bands of Odawa Indians, Michigan | Alcona, MI, ²⁸ Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI. |
| Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota | Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD. |
| Lower Elwha Tribal Community | Clallam, WA. |
| Lower Sioux Indian Community in the State of Minnesota | Redwood, MN, Renville, MN. |
| Lummi Tribe of the Lummi Reservation | Whatcom, WA. |
| Makah Indian Tribe of the Makah Indian Reservation | Clallam, WA. |
| Mashantucket Pequot Indian Tribe | New London, CT. ²⁹ |
| Mashpee Wampanoag Tribe | Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA, ³⁰ |
| Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan | Allegan, MI, ³¹ Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI. |
| Menominee Indian Tribe of Wisconsin | Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI. |
| Mescalero Apache Tribe of the Mescalero Reservation, New Mexico | Chaves, NM, Lincoln, NM, Otero, NM. |
| Miccosukee Tribe of Indians | Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL. |
| Minnesota Chippewa Tribe, Minnesota, Bois Forte Band (Nett Lake) | Itasca, MN, Koochiching, MN, St. Louis, MN. |
| Minnesota Chippewa Tribe, Minnesota, Fond du Lac Band | Carlton, MN, St. Louis, MN. |
| Minnesota Chippewa Tribe, Minnesota, Grand Portage Band | Cook, MN. |
| Minnesota Chippewa Tribe, Minnesota, Leech Lake Band | Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN. |
| Minnesota Chippewa Tribe, Minnesota, Mille Lacs Band | Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN. |
| Minnesota Chippewa Tribe, Minnesota, White Earth Band | Becker, MN, Clearwater, MN, Mahanomen, MN, Norman, MN, Polk, MN. |
| Mississippi Band of Choctaw Indians | Attala, MS, Jasper, MS, ³² Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS, ³³ Scott, MS, ³⁴ Winston, MS |

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|--|
| Mohegan Tribe of Indians of Connecticut | Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT. |
| Monacan Indian Nation | Amherst, VA, Nelson, VA, Albemarle, VA, Buckingham, VA, Appomattox, VA, Campbell, VA, Bedford, VA, Botetourt, VA, Rockbridge, VA, Augusta, VA, and the independent cities of Lynchburg, VA, Lexington, VA, Buena Vista, VA, Staunton, VA, Waynesboro, VA, and Charlottesville, VA. ³⁵ |
| Muckleshoot Indian Tribe | King, WA, Pierce, WA. |
| Nansemond Indian Tribe | The independent cities of Chesapeake, VA, Hampton, VA, Newport News, VA, Norfolk, VA, Portsmouth, VA, Suffolk, VA, and Virginia Beach, VA. ³⁶ |
| Narragansett Indian Tribe | Washington, RI. ³⁷ |
| Navajo Nation, Arizona, New Mexico, & Utah | Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM. |
| Nevada | Entire State. ³⁸ |
| Nez Perce Tribe | Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID. |
| Nisqually Indian Tribe | Pierce, WA, Thurston, WA. |
| Nooksack Indian Tribe | Whatcom, WA. |
| Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana | Big Horn, MT, Carter, MT, ³⁹ Rosebud, MT. |
| Northwestern Band of Shoshone Nation | Box Elder, UT. ⁴⁰ |
| Nottawaseppi Huron Band of the Pottawatomi, Michigan | Allegan, MI, ⁴¹ Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI. |
| Oglala Sioux Tribe | Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD, ⁴² Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD. |
| Ohkay Owingeh, New Mexico | Rio Arriba, NM. |
| Oklahoma | Entire State. ⁴³ |
| Omaha Tribe of Nebraska | Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE. |
| Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin) | Brown, WI, Outagamie, WI. |
| Oneida Indian Nation (previously listed as the Oneida Nation of New York) | Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY. |
| Onondaga Nation | Onondaga, NY. |
| Paiute Indian Tribe of Utah | Iron, UT, ⁴⁴ Millard, UT, Sevier, UT, Washington, UT. |
| Pamunkey Indian Tribe | Caroline, VA, Hanover, VA, Henrico, VA, King William, VA, King and Queen, VA, New Kent, VA, and the independent city of Richmond, VA. ⁴⁵ |
| Pascua Yaqui Tribe of Arizona | Pima, AZ. ⁴⁶ |
| Passamaquoddy Tribe | Aroostook, ME, ⁴⁷ Hancock, ME, ⁴⁹ Washington, ME. |
| Penobscot Nation | Aroostook, ME, ⁵⁰ Penobscot, ME. |
| Poarch Band of Creeks | Baldwin, AL, ⁵¹ Elmore, AL, Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL. |
| Pokagon Band of Pottawatomi Indians, Michigan and Indiana | Allegan, MI, ⁵² Berrien, MI, Cass, MI, Elkhart, IN, Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI. |
| Ponca Tribe of Nebraska | Boyd, NE, ⁵³ Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawatomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA. |
| Port Gamble S'Klallam Tribe | Kitsap, WA. |
| Prairie Band of Pottawatomi Nation | Jackson, KS. |
| Prairie Island Indian Community in the State of Minnesota | Goodhue, MN. |
| Pueblo of Acoma, New Mexico | Cibola, NM. |
| Pueblo of Cochiti, New Mexico | Sandoval, NM, Santa Fe, NM. |
| Pueblo of Isleta, New Mexico | Bernalillo, NM, Tarrant, NM, Valencia, NM. |
| Pueblo of Jemez, New Mexico | Sandoval, NM. |
| Pueblo of Laguna, New Mexico | Bernalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM. |
| Pueblo of Nambe, New Mexico | Santa Fe, NM. |
| Pueblo of Picuris, New Mexico | Taos, NM. |
| Pueblo of Pojoaque, New Mexico | Rio Arriba, NM, Santa Fe, NM. |
| Pueblo of San Felipe, New Mexico | Sandoval, NM. |
| Pueblo of San Ildefonso, New Mexico | Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM. |
| Pueblo of Sandia, New Mexico | Bernalillo, NM, Sandoval, NM. |
| Pueblo of Santa Ana, New Mexico | Sandoval, NM. |
| Pueblo of Santa Clara, New Mexico | Los Alamos, NM, Sandoval, NM, Santa Fe, NM. |
| Pueblo of Taos, New Mexico | Colfax, NM, Taos, NM. |
| Pueblo of Tesuque, Mexico | Santa Fe, NM. |
| Pueblo of Zia, New Mexico | Sandoval, NM. |
| Puyallup Tribe of the Puyallup Reservation | King, WA, Pierce, WA, Thurston, WA. |

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|---|
| Quechan Tribe of the Fort Yuma Indian Reservation, Arizona and California. | Yuma, AZ, Imperial, CA. |
| Quileute Tribe of the Quileute Reservation | Clallam, WA, Jefferson, WA. |
| Quinault Indian Nation | Grays Harbor, WA, Jefferson, WA. |
| Rapid City, South Dakota | Pennington, SD. ⁵⁴ |
| Rappahannock Tribe, Inc. | King and Queen County, VA, Caroline County, VA, Essex County, VA, King William County, VA. ⁵⁵ |
| Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin | Bayfield, WI. |
| Red Lake Band of Chippewa Indians, Minnesota | Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN. |
| Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota | Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD. |
| Sac & Fox Nation of Missouri in Kansas and Nebraska | Brown, KS, Richardson, NE. |
| Sac & Fox Tribe of the Mississippi in Iowa | Tama, IA. |
| Saginaw Chippewa Indian Tribe of Michigan | Arenac, MI, ⁵⁶ Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI. |
| Saint Regis Mohawk Tribe | Franklin, NY, St. Lawrence, NY. |
| Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona. | Maricopa, AZ. |
| Samish Indian Nation | Clallam, WA, ⁵⁷ Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA. |
| San Carlos Apache Tribe of the San Carlos Reservation, Arizona | Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ. |
| San Juan Southern Paiute Tribe of Arizona | Coconino, AZ, San Juan, UT. |
| Santee Sioux Nation, Nebraska | Bon Homme, SD, Knox, NE. |
| Sauk-Suiattle Indian Tribe | Snohomish, WA, Skagit, WA. |
| Sault Ste. Marie Tribe of Chippewa Indians, Michigan | Alger, MI, ⁵⁸ Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI. |
| Seminole Tribe of Florida | Broward, FL, Collier, FL, Miami-Dade, FL, Glades, FL, Hendry, FL. |
| Seneca Nation of Indians | Alleghany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA. |
| Shakopee Mdewakanton Sioux Community of Minnesota | Scott, MN. |
| Shinnecock Indian Nation | Nassau, NY, ⁵⁹ Suffolk, NY. |
| Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation | Pacific, WA. |
| Shoshone-Bannock Tribes of the Fort Hall Reservation | Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID, ⁶⁰ Power, ID. |
| Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada | The entire state of Nevada, Owyhee, ID. |
| Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota. | Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN. |
| Skokomish Indian Tribe | Mason, WA. |
| Skull Valley Band of Goshute Indians of Utah | Tooele, UT. |
| Snoqualmie Indian Tribe | King, WA, ⁶¹ Snohomish, WA, Pierce, WA, Island, WA, Mason, WA. |
| Sokaogon Chippewa Community, Wisconsin | Forest, WI. |
| Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado .. | Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM. |
| Spirit Lake Tribe, North Dakota | Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND. |
| Spokane Tribe of the Spokane Reservation | Ferry, WA, Lincoln, WA, Stevens, WA. |
| Squaxin Island Tribe of the Squaxin Island Reservation | Mason, WA. |
| St. Croix Chippewa Indians of Wisconsin | Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI. |
| Standing Rock Sioux Tribe of North & South Dakota | Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD. |
| Stillaguamish Tribe of Indians of Washington | Snohomish, WA. |
| Stockbridge Munsee Community, Wisconsin | Menominee, WI, Shawano, WI. |
| Suquamish Indian Tribe of the Port Madison Reservation | Kitsap, WA. |
| Swinomish Indian Tribal Community | Skagit, WA. |
| Tejon Indian Tribe | Kern, CA. ⁶² |
| Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota .. | Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND. |
| Tohono O'odham Nation of Arizona | Maricopa, AZ, Pima, AZ, Pinal, AZ. |
| Tolowa Dee-ni' Nation (formerly known as Smith River Rancheria of California). | California, Curry, OR. ⁶³ |
| Tonawanda Band of Seneca | Genesee, NY, Erie, NY, Niagara, NY. |
| Tonto Apache Tribe of Arizona | Gila, AZ. |
| Trenton Service Unit, North Dakota and Montana | Divide, ND, ⁶⁴ McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT. |
| Tulalip Tribes of Washington | Snohomish, WA. |
| Tunica-Biloxi Indian Tribe | Avoyelles, LA, Rapides, LA. ⁶⁵ |
| Turtle Mountain Band of Chippewa Indians of North Dakota | Rolette, ND. |
| Tuscarora Nation | Niagara, NY. |

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|--|
| Upper Mattaponi Tribe | Caroline, VA, Charles City, VA, Essex, VA, Hanover, VA, Henrico, VA, James City, VA, King and Queen, VA, King William, VA, Middlesex, VA, New Kent, VA, Richmond, VA and the independent city of Richmond, VA. ⁶⁶ |
| Upper Sioux Community, Minnesota | Chippewa, MN, Yellow Medicine, MN. |
| Upper Skagit Indian Tribe | Skagit, WA. |
| Ute Indian Tribe of the Uintah & Ouray Reservation, Utah | Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT. |
| Ute Mountain Ute Tribe | Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT. |
| Wampanoag Tribe of Gay Head (Aquinnah) | Dukes, MA, ⁶⁷ Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA. ⁶⁸ |
| Washoe Tribe of Nevada & California | Nevada, California except for the counties listed in footnote. |
| White Mountain Apache Tribe of the Fort Apache Reservation, Arizona | Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ. |
| Wilton Rancheria, California | Sacramento, CA. ⁶⁹ |
| Winnebago Tribe of Nebraska | Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA. |
| Yankton Sioux Tribe of South Dakota | Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE. |
| Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona | Yavapai, AZ. |
| Yavapai-Prescott Indian Tribe | Yavapai, AZ. |
| Ysleta Del Sur Pueblo of Texas | El Paso, TX. ⁷⁰ |
| Zuni Tribe of the Zuni Reservation, New Mexico | Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM. |

¹ Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for “members of the Tribe” by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

² Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

³ Aroostook Band of Micmacs was recognized by Congress on November 26, 1991, through the Aroostook Band of Micmac Settlement Act. Aroostook County, ME, was defined as the SDA.

⁴ Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Brigham City Intermountain School Health Center, Utah (Pub. L. 88–358).

⁵ Entire State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

⁶ The counties were recognized after the January 1984 CHSDA FRN was published, in accordance with Public Law 103–116, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, dated October 27, 1993.

⁷ There is no reservation for the Cayuga Nation; the service delivery area consists of those counties identified by the Cayuga Nation.

⁸ The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe’s PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

⁹ The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe—Eastern Division as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe’s PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

¹⁰ Skamania County, WA, has historically been a part of the Yakama Service Unit population since 1979.

¹¹ In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, members of the Confederated Tribes of Siletz Indians of Oregon residing in these counties are eligible for contract health services.

¹² Chelan County, WA, has historically been a part of the Colville Service Unit population since 1970.

¹³ Pursuant to Public Law 98–481 (H. Rept. No. 98–904), Coos, Lower Umpqua and Siuslaw Restoration Act, members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation.

¹⁴ The Confederated Tribes of Grand Ronde Community of Oregon were recognized by Public Law 98–165 which was signed into law on November 22, 1983, and provides for eligibility in these six counties without regard to the existence of a reservation.

¹⁵ The CHSDA for the Coushatta Tribe of Louisiana was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(6)) to include city limits of Elton, LA.

¹⁶ Cow Creek Band of Umpqua Tribe of Indians recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later administratively expanded the CHSDA to include the counties of Coos, OR, Deschutes, OR, Klamath, OR, and Lane, OR.

¹⁷ The Cowlitz Indian Tribe was recognized in July 2002 as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. The CHSDA was administratively expanded to include Columbia County, OR, Kittitas, WA, and Wahkiakum County, WA, as published at 67884 FR December 21, 2009.

¹⁸ Treasure County, MT, has historically been a part of the Crow Service Unit population.

¹⁹ The counties listed have historically been a part of the Grand Traverse Service Unit population since 1980.

²⁰ Haskell Indian Health Center has historically been a part of Kansas Service Unit since 1979. Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Haskell Indian Health Center (H. Rept. No. 95–392).

²¹ CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)). Dane County, WI, was added to the reservation by the Bureau of Indian Affairs in 1986.

²² Public Law 97–428 provides that any member of the Houlton Band of Maliseet Indians in or around the Town of Houlton shall be eligible without regard to existence of a reservation.

²³ The Jena Band of Choctaw Indian was Federally acknowledged as documented at 60 FR 28480, May 31, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

²⁴ Kickapoo Traditional Tribe of Texas, formerly known as the Texas Band of Kickapoo, was recognized by Public Law 97–429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

²⁵ The Klamath Indian Tribe Restoration Act (Pub. L. 99–398, Sec. 2(2)) states that for the purpose of Federal services and benefits “members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation”.

²⁶ The Koi Nation of Northern California, formerly known as the Lower Lake Rancheria, was reaffirmed by the Secretary of the Bureau of Indian Affairs on December 29, 2000. The counties listed were designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

²⁷ The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec. 4(b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

²⁸ The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec. 4(b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

²⁹ Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides a reservation for the Mashantucket Pequot Indian Tribe in New London County, CT.

³⁰ The Mashpee Wampanoag Tribe was recognized in February 2007, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

³¹ The Match-e-be-nash-she-wish Band of Pottawatomis Indians of Michigan was recognized in October 1998, as documented at 63 FR 56936, October 23, 1998. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

³² Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

³³ Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

³⁴ Scott County, MS, has historically been a part of the Choctaw Service Unit population since 1970.

³⁵ The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Monacan Indian Nation as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe’s PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

³⁶ The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Nansmond Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe’s PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

³⁷ The Narragansett Indian Tribe was recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County, RI, are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

³⁸ Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22 (a)(2)).

³⁹ Carter County, MT, has historically been a part of the Northern Cheyenne Service Unit population since 1979.

⁴⁰ Land of Box Elder County, Utah, was taken into trust for the Northwestern Band of Shoshoni Nation in 1986.

⁴¹ The Nottawaseppi Huron Band of the Potawatomi, Michigan, formerly known as the Huron Band of Potawatomi, Inc., was recognized in December 1995, as documented at 60 FR 66315, December 21, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

⁴² Washabaugh County, SD, merged and became part of Jackson County, SD, in 1983; both were/are CHSDA counties for the Oglala Sioux Tribe.

⁴³ Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22 (a)(3)).

⁴⁴ Paiute Indian Tribe of Utah Restoration Act, Public Law 96–227, provides for the extension of services for the Paiute Indian Tribe of Utah to these four counties without regard to the existence of a reservation.

⁴⁵ In the **Federal Register** on July 8, 2015 (80 FR 39144), the Pamunkey Indian Tribe was officially recognized as an Indian Tribe within the meaning of Federal law. The counties listed were designated administratively as the PRCDA, for the purposes of operating a PRC program.

⁴⁶ Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Pascua Yaqui Tribe of Arizona pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

⁴⁷ The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide contract health services to the Passamaquoddy Tribe and the Penobscot Nation.

⁴⁸ The Passamaquoddy Tribe has two reservations: Indian Township and Pleasant Point. The PRCDA for the Passamaquoddy Tribe at Indian Township, ME, is Aroostook County, ME, Washington County, ME, and Hancock County, ME. The PRCDA for the Passamaquoddy Tribe at Pleasant Point, ME, is Washington County, ME, south of State Route 9, and Aroostook County, ME.

⁴⁹ The Passamaquoddy Tribe’s counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

⁵⁰ The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide PRC to the Passamaquoddy Tribe and the Penobscot Nation.

⁵¹ Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

⁵² Public Law 103–323 restored Federal recognition to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, in 1994 and identified counties to serve as the SDA.

⁵³ The Ponca Restoration Act, Public Law 101–484, recognized members of the Ponca Tribe of Nebraska in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota as residing on or near a reservation. Public Law 104–109 made technical corrections to laws relating to Native Americans and added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa to the Ponca Tribe of Nebraska SDA.

⁵⁴ Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations. Historically services have been provided at Rapid City (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

⁵⁵ The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Rappahannock Tribe, Inc. as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe’s PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

⁵⁶ Historically part of Isabella Reservation Area for the Saginaw Chippewa Indian Tribe of Michigan and the Eastern Michigan Service Unit population since 1979.

⁵⁷ The Samish Indian Tribe Nation was Federally acknowledged in April 1996 as documented at 61 FR 15825, April 9, 1996. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

⁵⁸ CHSDA counties for the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, were designated by regulation (42 CFR 136.22(a)(4)).

⁵⁹ The Shinnecock Indian Nation was Federally acknowledged in June 2010 as documented at 75 FR 34760, June 18, 2010. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

⁶⁰ Lemhi County, ID, has historically been a part of the Fort Hall Service Unit population since 1979.

⁶¹ The Snoqualmie Indian Tribe was Federally acknowledged in August 1997 as documented at 62 FR 45864, August 29, 1997. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

⁶² On December 30, 2011 the Office of Assistant Secretary-Indian Affairs reaffirmed the Federal recognition of the Tejon Indian Tribe. The county listed was designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

⁶³ The counties listed are designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

⁶⁴ The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Unit, North Dakota and Montana, in Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

⁶⁵ Rapides County, LA, has historically been a part of the Tunica Biloxi Service Unit population since 1982.

⁶⁶ The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Upper Mattaponi Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

⁶⁷ According to Public Law 100–95, Sec. 12, members of the Wampanoag Tribe of Gay Head (Aquinnah) residing on Martha's Vineyard are deemed to be living on or near an Indian reservation for the purposes of eligibility for Federal services.

⁶⁸ The counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

⁶⁹ The Wilton Rancheria, California had Federal recognition restored in July 2009 as documented at 74 FR 33468, July 13, 2009. Sacramento County, CA, was designated administratively as the SDA, to function as a CHSDA. Sacramento County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

⁷⁰ Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coshatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Chris Buchanan,

RADM, Assistant Surgeon General, Deputy Director, Indian Health Service.

[FR Doc. 2020–00905 Filed 1–21–20; 8:45 a.m.]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Cheryl Nordstrom, Ph.D. Scientific Review Officer, Scientific Review Branch, National Institute of Nursing Research, National Institutes of Health, 6701 Rockledge Drive, Room 6187, Bethesda, Md 20892, (301) 827–1499, cheryl.nordstrom@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 15, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00897 Filed 1–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: February 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, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Bradley Monroe Cooke, Scientific Review Officer, 6710B Rockledge Drive, Bethesda, MD 20892, 703–292–8460, brad.cooke@nih.gov.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee; Health, Behavior, and Context Subcommittee.

Date: February 24, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Room 2127B, Bethesda, MD 20892, 301–827–4902, kimberly.houston@nih.gov.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee Developmental Biology Subcommittee.

Date: February 28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6701B Rockledge Drive, Bethesda, MD 20892, 301–435–6878, wedeenc@mail.nih.gov.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

Date: March 5, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch (SRB), DER, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2125C, Bethesda, MD 20817, 301-435-6916, kielbj@mail.nih.gov.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, National Institutes of Health, NICHD, SRB, 6710B Rockledge Drive, Bethesda, MD 20892, 301-435-6902, PETER.ZELAZOWSKI@NIH.GOV.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Loan Repayment Review.

Date: March 16, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD Offices, 6710B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6701B Rockledge Drive, Bethesda, MD 20892, (301) 435-6680, skandasa@mail.nih.gov.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Women's Reproductive Health Research (WRHR) Career Development Program (K12).

Date: April 29-30, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892-7510, 301-435-6902, peter.zelazowski@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 15, 2020.

Ronald J. Livingston, Jr.,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-00896 Filed 1-21-20; 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: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: February 19, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20817-7814, 301-435-0904, sara.ahlgren@nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Dissemination and Implementation Research in Health Study Section.

Date: February 19-20, 2020.

Time: 8:00 a.m. to 6:00 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: Mark Allen Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, 301-402-4128, mark.vosvick@nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 19-20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, hunnicuttr@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: February 19, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301-451-3388, seldens@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-19-376: Mobile Health: Technology and Outcomes in Low and Middle Income Countries.

Date: February 19-20, 2020.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301-379-9351, allen.richon@nih.hhs.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: February 19-20, 2020.

Time: 9:30 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 (Virtual Meeting).

Contact Person: Leslie S. Itsara, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, leslie.itsara@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Understanding Alzheimer's Disease.

Date: February 19-20, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301-408-9115, bsokolov@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Review: Career Development in Tobacco Regulatory Research.

Date: February 19, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435-0628, newmanjh@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 15, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-00899 Filed 1-21-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Integrative Health.

Date: June 5, 2020.

Closed: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Science, Natcher Bldg., E1/E2, 45 Center Drive, Bethesda, MD 20892.

Open: 10:00 a.m. to 4:00 p.m.

Agenda: A report from the Director of the Center and Other Staff.

Place: National Institute of General Medical Science, Natcher Bldg., E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892-5475, 301-594-3462, khalsap@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://nccih.nih.gov/about/naccih>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: January 15, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-00895 Filed 1-21-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Videoscopes

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain videoscopes (or remote visual inspection equipment). Based upon the facts presented, CBP has concluded that the country of origin of

the videoscopes in question is Japan, for purposes of U.S. Government procurement.

DATES: The final determination was issued on January 14, 2020. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within February 21, 2020.

FOR FURTHER INFORMATION CONTACT: Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-1511.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 14, 2020, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain videoscopes (IPLEX GT and GX Videoscopes), imported by Olympus Scientific Solutions Technologies Inc. ("OSST"), which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, Headquarters Ruling Letter ("HQ") H303139, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the country of origin of the videoscopes is Japan for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: January 14, 2020.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H303139

January 14, 2020

OT:RR:CTF:VS H303139 YAG/JMV

CATEGORY: Origin

Mr. Daniel Shapiro
Olympus Scientific Solutions Americas
48 Woerd Avenue
Waltham, MA 02453

RE: U.S. Government Procurement;
Country of Origin of Videoscopes;

Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*); Subpart B, Part 177, CBP Regulations

Dear Mr. Shapiro:

This is in response to your correspondence, dated March 12, 2019, requesting a final determination, on behalf of Olympus Scientific Solutions Technologies Inc. (“OSST”), concerning the country of origin of certain videoscopes, pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR 177.21 *et seq.*).

We note that OSST is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

OSST imports the IPLEX GT and GX Videoscope (remote visual inspection equipment), from Japan. This equipment allows for the non-destructive inspection of turbines, heat exchangers, pipes, boiler tubes, and other products. According to OSST’s submission, the videoscopes feature three main components: (1) An 8-inch touch screen or computer control unit (“CCU”); (2) a scope unit with a light source (“scope”); and, (3) a tip adapter. OSST states that the overall manufacturing process involves Olympus Japan, a parent company of OSST, designing the CCU and the scope, and assembling these components into an operational unit in Japan.

The CCU base unit, which streams live images captured by the scope, has a wide video graphics array with a 5-step adjustable LCD backlight, a 100V to 240V AC power supply, 10.8V battery, HDMI video input, and a headset microphone CTIA plug. A third-party supplier manufactures the main components of the CCU in Thailand. The following steps of the CCU manufacturing process are performed in Thailand: printed circuit board (“PCB”) mounting, and assembling the LCD panel to the PCB assembly. The software for the CCU is wholly designed in Japan, but the core of the Japanese software (firmware) is installed in Thailand. In Japan, the latest version of the software and configurations are installed, and the CCU is inspected and tested. Final assembly and packaging of the CCU and scope are completed in Japan and shipped.

The scope includes LED illumination, a 2-stage indicator for high temperature warning, and a handle with a true feel electronic scope tip articulation/fine mode articulation control using the touch screen menu. OSST claims that the scope represents the essence of the

videoscope. According to the submission, a third-party Thai supplier assembles the handset of the scope unit by screwing the plastic handset, handset PCB, button and joystick together, and ships these components to Japan. Olympus Japan then connects the handset to the insertion tube, to create the scope unit subassembly.

In addition to the handset, the scope unit subassembly includes the insertion tube and an optics assembly. The insertion tube is made of four layers: A stainless steel cord, a stainless steel braid, a Viton waterproof layer, and a tungsten braid. All four layers are created and assembled in Japan through wire brazing using a microscope, braiding of high durability tungsten, and soldering. At the end of the insertion tube is the optics assembly. Manufacturing of the optics assembly includes the creation and testing of micro lenses, and small parts assembly in a clean room. The optics assembly is essentially a small camera completely manufactured in Japan. The scope unit then undergoes software installation, calibration and product testing. The insertion tube and optics assembly, controlled by the handset, are what enable the videoscope to move around tight spaces and capture images.

According to OSST, once Olympus Japan completes the manufacturing process for the CCU and the scope, it combines both units to make a functional videoscope in Japan by fitting a connector into both the CCU and the scope, centering the cable gasket to assure ingress protection (“IP”) rating and screwing the doors shut to complete the physical mating. OSST states that these steps allow the CCU and scope to communicate without which the scope and CCU as separate units would not have much practical application. Olympus Japan assembles all scope and CCU models together to make 12 different versions, which will then be imported into the United States.

Tip adapters are necessary for the function of the scope but will be separately shipped to the United States due to the number of tip adapter models and variations that may apply. The tip adapters are wholly designed, manufactured and assembled in Japan to accommodate different field, and direction of view and depths of field. In a phone call with this office, OSST likened the tip adapter to an interchangeable lens on a camera. OSST claims that the tip adapter does not change the videoscope’s ability to function, but it does enhance the videoscope’s ability to focus or take clear pictures. Once imported into the United States, the videoscope will then

be paired with the tip adapter per customer order by screwing the tip adapter to the scope.¹

You have provided charts and cost figures to show that over 80 percent of the total cost of the combined unit represents the portion of the cost incurred in Japan to develop and produce the CCU and scope units for the IPLEX GT and GX Videoscopes.

ISSUE:

What is the country of origin of the videoscopes for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*).

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. The regulations define a “designated country end product” as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least

¹ The IPLEX GT and GX Videoscopes operate by attaching the scope (with the light source) to the CCU and then inserting a tip adapter to the end of the scope to enhance focus. While the GT and GX models share the same hardware, the GX has enhanced software features to gain control, dynamic noise reduction, sharpness, saturation display, and note text options.

developed country end product, or a Caribbean Basin country end product.

A “WTO GPA country end product” is defined as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 CFR 25.003.

Japan is a WTO GPA country; however, Thailand is not.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative. In *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a “mixed question of technology and customs law.”

The Court of International Trade has looked at the essential character of an article to determine whether its identity has been substantially transformed through assembly or processing. “The term ‘character’ is defined as ‘one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.’” *Uniden America Corporation v. United States*, 24 C.I.T. 1191, 1195 (2000), citing *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 311 (1992). In *Uniden*, concerning whether the assembly of cordless telephones and the installation of their detachable A/C

(alternating current) adapters constituted instances of substantial transformation, the Court of International Trade applied the “essence test” and found that “[t]he essence of the telephone is housed in the base and the handset.” In *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 225, 542 F. Supp. 1026, 1031, aff’d, 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the “very essence of the finished shoe” and thus the character of the product remained unchanged and did not undergo substantial transformation in the United States.

CBP has applied the Court of International Trade’s analysis in *Uniden* to determine whether other minor components when combined with a larger and a more complex system would lose their separate identities to become part of that larger system. In Headquarters Ruling Letter (“HQ”) H100055 dated May 28, 2010, CBP ruled on the country of origin of a lift unit for an overhead patient lift system. Among the issues we considered was whether a battery charger, when inserted into the hand control unit inside the lift unit, was substantially transformed. Relying on the *Uniden* decision, we noted that the substantial transformation test should be applied to the product as a whole and not to each of the parts. We determined that the lift unit conveyed the essential character to the system and because the detachable hand control and the battery charger were parts of that system, they were substantially transformed when attached to the lift unit. Thus, we held that the country of origin of the hand control unit and battery charger when packaged with the lift unit was Sweden. See also HQ H112725, dated October 6, 2010, (inclusion of a battery charger did not alter the essential character of the Adflo™ respiration system which was designed to provide respiratory protection in a welding environment).

While software is often essential to the function of a product, CBP generally does not find the downloading of software to be a substantial transformation. However, CBP may find a substantial transformation when the software is downloaded in the country where it was written and developed. CBP considered a scenario in HQ H241177, dated December 3, 2013, in which a device was manufactured in one country, the software used to permit that device to operate was written in another country, and the installation of that software occurred in a third country. In that case, switches were assembled to completion in Malaysia

and then shipped to Singapore, where software developed in the United States was downloaded. It was claimed that the U.S.-origin software enabled the imported switches to interact with other network switches and without this software, the imported devices could not function as Ethernet switches. CBP found that the software downloading performed in Singapore did not amount to programming. We explained that programming involves writing, testing and implementing code necessary to make a computer function in a certain way. See *Data General v. United States*, 4 C.I.T. 182 (1982); see also “computer program,” Encyclopedia Britannica (2013), (Nov. 26, 2019) <http://www.britannica.com/EBchecked/topic/130654/computer-program>, which explains, in part, that “a program is prepared by first formulating a task and then expressing it in an appropriate computer language, presumably one suited to the application.” While the programming occurred in the United States, the downloading occurred in Singapore; therefore, CBP found that the country where the last substantial transformation occurred was Malaysia, where the major assembly processes were performed. See also HQ H290670, dated January 29, 2019 (finding that fully assembled Ethernet Switches were substantially transformed when U.S.-origin firmware and software were downloaded onto the switches).

When there are multiple manufacturing locations, the country of origin is the country where the last substantial transformation occurs. HQ H203555 dated April 23, 2012, concerned the country of origin of certain oscilloscopes under five distinct manufacturing scenarios. In the various scenarios, the motherboard and the power controller of either Malaysian or Singaporean origin were assembled in Singapore with subassemblies of Singaporean origin into oscilloscopes. CBP found that under the various scenarios, there were three countries under consideration where programming and/or assembly operations took place, the last of which was Singapore. CBP noted that no one country’s operations dominated the manufacturing operations of the oscilloscopes. As a result, while the boards assembled in Malaysia were important to the function of the oscilloscopes, and the U.S. firmware and software were used to program the oscilloscopes in Singapore, the final programming and assembly of the oscilloscopes was in Singapore; hence, Singapore imparted the last substantial transformation, and the country of

origin of the oscilloscopes was Singapore.

Based on the information provided in your letter and consistent with the CBP rulings cited above, we find the country of origin of the videoscopes to be Japan. We note that while many important components of the videoscopes are of Thai origin, and many processing operations occur in Thailand (specifically, with respect to the initial assembly of the CCU and the scope handset), the Japanese operations require more skill and precision, and impart the final product with its essential character. Many of the critical operations involved in completing the product, such as developing and installing the software; manufacturing the insertion tube, the optics assembly and the tip adapter; and assembling the components, are performed in Japan. The assembly of the scope in Japan includes assembling the optics, the stainless steel cord, the stainless steel braid, waterproof layer and the tungsten braid into the scope tube, which enable the scope to see and navigate small spaces. The scope imparts the videoscope with its identifying functionality, meaning it is a scope unit with the light source that enables the videoscope to nondestructively see, move, and video small areas of a product such as turbines or pipes. The videoscope's identifying function is further enhanced by the inclusion of the Japanese originating tip adapter. Additionally, while the CCU is assembled in Thailand, it is the software completely developed and largely installed in Japan that allows the user to control the scope and view the image the scope captures on the CCU. Finally, the assembly of components in Japan allows the CCU and the scope to communicate.

We note that the software installed in Japan is also completely developed and programmed in Japan and the portion of the costs incurred in Japan to develop and produce the CCU and scope units for the videoscopes represents over 80% of the total cost of the combined unit.

Consequently, we find that the imported videoscopes are substantially transformed because of the assembly operations performed in Japan to produce the fully functional and operational videoscopes. Based on the information presented, it is our opinion that the country of origin of videoscopes is Japan.

HOLDING:

Based on the facts provided, the finished videoscopes will be considered a product of Japan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Alice A. Kipel,
Executive Director, Regulations and Rulings,
Office of Trade.

[FR Doc. 2020-00947 Filed 1-21-20; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP (Texas City, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP (Texas City, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that

Saybolt LP (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 3, 2018.

DATES: Saybolt LP (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of April 3, 2018. The next triennial inspection date will be scheduled for April 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 220 Texas Avenue, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Saybolt LP (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title |
|--------------|----------------------------|
| 3 | Tank Gauging. |
| 5 | Metering. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 12 | Calculations. |
| 17 | Marine Measurement. |

Saybolt LP (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|-------------|--------------|---|
| 27-02 | D 1298 | Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03 | D 4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27-04 | D 95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05 | D 4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27-06 | D 473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27-13 | D 4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |

Anyone wishing to employ this entity to conduct laboratory analyses and

gauger services should request and receive written assurances from the

entity that it is accredited or approved by the U.S. Customs and Border

Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: January 7, 2020.

Larry D. Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2020-00946 Filed 1-21-20; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0023; OMB No. 1660-0113]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP). The THSGP investment justification allows certain Tribes to apply for Federal funding to support efforts to build and sustain core capabilities across the Prevention, Protection, Mitigation, Response, and Recovery mission areas to protect the homeland.

DATES: Comments must be submitted on or before March 23, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use

only one of the following means to submit comments:

(1) *Online.* Submit comments at www.regulations.gov under Docket ID FEMA-2019-0023. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Cornelius Jackson, Program Analyst, DHS FEMA, Grant Programs Directorate, (202) 786-9508. You may contact the Information Management Division for copies of the proposed collection of information at email address: FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: The purpose of the THSGP to make grants available to Federally-recognized “directly eligible tribes” to provide Tribes with the ability to develop and deliver core capabilities using the combined efforts of the whole community, rather than the exclusive effort of any single organization or level of government. The THSGP’s allowable costs support efforts of Tribes to build and sustain core capabilities across the prevention, protection, mitigation, response, and recovery mission areas. The THSGP also plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving DHS FEMA’s National Preparedness Goal of a secure and resilient Nation. Federally-recognized Tribes are those defined by section 4(e) of the Indian Self-Determination Act (25 U.S.C. 450b(e)). “Directly eligible tribes” are defined in Section 2001 of the Homeland Security Act of 2002, as amended (Pub. L. 107-296) (6 U.S.C. 601).

Collection of Information

Title: FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP).

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660-0113.

FEMA Forms: FEMA Form 089-22, THSGP—Tribal Investment Justification Template.

Abstract: The THSGP provides supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks. This program provides funds to build capabilities at the Tribal governmental level.

Affected Public: Tribal Governments.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Estimated Total Annual Burden Hours: 15,000.

Estimated Total Annual Respondent Cost: \$624,750.

Estimated Respondents’ Operation and Maintenance Costs: \$0.

Estimated Respondents’ Capital and Start-Up Costs: \$0.

Estimated Total Annual Cost to the Federal Government: \$246,141.

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. 2020-00942 Filed 1-21-20; 8:45 am]

BILLING CODE 9111-46-P

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency

[Docket ID: FEMA–2019–0029; OMB No. 1660–0115]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental and Historic Preservation Screening Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information collection activities required to administer the Environmental and Historic Preservation Screening Form.

DATES: Comments must be submitted on or before March 23, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at www.regulations.gov under Docket ID FEMA–2019–0029. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Beth McWaters-Bjorkman, Environmental Protection Specialist, FEMA, Grant Programs Directorate, 202–786–9854, elizabeth.mcwaters-bjorkman@fema.dhs.gov. You may contact the Records Management Division for copies of the proposed collection of information at email address: FEMA-

Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: FEMA's Grant Programs Directorate (GPD) awards thousands of grants each year through various grant programs. These programs award funds for projects used to improve homeland security and emergency preparedness. The National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, Sec. 102(B) and (C), 42 U.S.C. 4332, the National Historic Preservation Act of 1966 (NHPA), as amended, Public Law 89–665, 54 U.S.C. 306108 and a variety of other environmental and historic preservation laws and Executive Orders (E.O.) require the Federal government to examine the potential impacts of its proposed actions on communities, public health and safety, and cultural, historic, and natural resources prior to undertaking those actions. The GPD process of considering these potential impacts is called an environmental and historic preservation (EHP) review which is employed to examine compliance with multiple EHP authorities through one consolidated process.

The 2020 EHP Screening Form does not require any new information, and includes an appendix with guidance on providing photographs with the EHP submission. Recipients are no longer required to submit floodplain and wetlands maps or information about the proposed project's relationship to an existing master plan.

Collection of Information

Title: Environmental and Historic Preservation Screening Form.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0115.

FEMA Forms: FEMA Form 024–0–1, Environmental and Historic Preservation Screening Form.

Abstract: NEPA requires each Federal agency to examine the impact of its actions (including the actions of recipients using grant funds) on the human environment, to look at potential alternatives to those actions, and to inform both decision-makers and the public of those impacts through a transparent process. This Screening Form will facilitate FEMA's review of recipient actions in FEMA's effort to comply with the environmental requirements.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Number of Respondents: 2,000.

Number of Responses: 2,000.

Estimated Total Annual Burden Hours: 16,000.

Estimated Cost: The estimated annual cost to respondents for the hour burden is \$871,360. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is \$5,902,832.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–00987 Filed 1–21–20; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency

[Docket ID: FEMA–2019–0021; OMB No. 1660–NW75]

Agency Information Collection Activities: Proposed Collection; Comment Request; Facility Access Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this

notice seeks comments concerning the Facility Access Request forms. The purpose of the forms is to apply for access to a FEMA controlled facility. This information is used to create a profile in the Physical Access Control System. The personally identifiable information is used to authenticate the identity of Federal employees, contractors, and visitors who have entry authorization, and in the event of an emergency, to contact individuals.

DATES: Comments must be submitted on or before March 23, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at www.regulations.gov under Docket ID FEMA-2019-0021. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: J'son Tyson; Chief, Identity Credential and Access Management; FEMA/OCSO/FOD; 202-412-5600; j'son.tyson@fema.dhs.gov. You may contact the Information Management Division for copies of the proposed collection of information at email address: FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) requires all new FEMA employees, contractors, and visitors to complete a Facility Access Request, FEMA Form 121-3-1-3A, prior to accessing any FEMA facility. In addition, for certain facilities designated as high security, current FEMA employees, contractors, and visitors will be required to fill out a separate Facility Access Request, FEMA Form 121-3-1-3B. The collection of personally identifiable information (PII) on both Facility Access Request forms will be used to create a profile in the Physical Access Control System (PACS) and

authenticate the identity of Federal employees, contractors, and visitors who request entry authorization.

FEMA will use the information to run a background check through the National Crime Information Center (NCIC) on non-Federal visitors and individuals accessing high security facilities. NCIC is a computerized database administered by the Federal Bureau of Investigation (FBI) that provides ready access to law enforcement agencies for making inquiries about an individual's criminal history. This check verifies that the individual does not have any outstanding warrants for criminal activities indicating a risk to the Department.

All non-FEMA employees and contractors are visitors. Visitors who are employed by the U.S. Government or government contractors working for an agency other than FEMA must present a valid employee identification card issued by their employing agency and an on-site FEMA-employed sponsor must confirm the visit through the Facility Access Request. The visitor's first and last name, agency of employment, and armed status are recorded in PACS as well as the first and last name of the sponsor. This information may be provided in advance or, if no notice of the visit is given, at time of entry.

U.S. citizens who are not employed by the U.S. Government or government contractors who intend to visit a FEMA facility are subject to a background check using the NCIC system. As with non-FEMA U.S. Government employees and contractors, all prospective visitors falling under the non-Federal U.S. citizen category must be sponsored by an on-site FEMA employee who serves as the primary point of contact for the Office of the Chief Security Officer (OCSO) during the screening process. Sponsors initiate the screening process for non-Federal U.S. citizens by contacting the FEMA Access Control office to communicate their intention to host one or more visitors.

To begin the screening process, FEMA OCSO collects PII from prospective visitors using FEMA Form 121-3-1-3A or FEMA Form 121-3-1-3B, Facility Access Request, depending on the security level of the facility that the employee, contractor, or visitor requires access.

OCSO grants or denies access based on the information provided by NCIC. The determination to grant or deny access is communicated back to the sponsor and recorded in the visitor management module of the PACS along

with the date the NCIC search was conducted.

Visitor management is governed by DHS Instruction Manual 121-01-011-01, Visitor Management for DHS Headquarters and DHS Component Headquarters Facilities; FEMA Directive 121-1, Personal Identification Standard; FEMA Directive 121-3, Facility Access; and FEMA Instruction 121-3-1, Credential and Access Reference.

Collection of Information

Title: Facility Access Request.

Type of Information Collection: New information collection.

OMB Number: 1660-NW75.

FEMA Forms: FEMA Form 121-3-1-3A and 121-3-1-3B.

Abstract: The purpose of these forms is to apply for access to all FEMA controlled facilities. This information is used to create a profile in the PACS. The PII is used to authenticate the identity of Federal employees, contractors, and visitors who have entry authorization, and in the event of an emergency, to contact individuals. Respondents are typically all occupations.

Affected Public: Federal Government & State, local or Tribal Government.

Estimated Number of Respondents: 20,500.

Estimated Number of Responses: 20,500.

Estimated Total Annual Burden Hours: 3,485.

Estimated Total Annual Respondent Cost: \$127,098.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: \$23,027.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Maile Arthur,

*Acting Records Management Branch Chief,
Mission Support, Federal Emergency
Management Agency, Department of
Homeland Security.*

[FR Doc. 2020-00886 Filed 1-21-20; 8:45 am]

BILLING CODE 9111-19-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000

L14400000.BJ0000.LXSSF2210000.241A;

MO # 4500142180 TAS: 20X]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: Filing is applicable at 10:00 a.m. on the date indicated below.

FOR FURTHER INFORMATION CONTACT:

Michael O. Harmening, Chief Cadastral Surveyor for Nevada, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502-7147, phone: 775-861-6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on January 6, 2020.

The plat, in one sheet, representing the dependent resurvey of a portion of the west boundary and the subdivisional lines, and the subdivision of sections 7 and 18, Township 47 North, Range 58 East, Mount Diablo Meridian, Nevada, under Group No. 986, was accepted January 2, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the survey of portions of the south, east, and north boundaries, and a portion of the subdivisional lines of Township 12 North, Range 55 East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

3. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the dependent resurvey of a portion of the west boundary of Township 12 North, Range 56 East (Ruby Valley Guide Meridian) and a portion of Tract 37, and the survey of the north boundary and portion of the subdivisional lines of Township 12 North, Range 55½ East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

4. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the dependent resurvey of portions of the subdivisional lines, and portions of the subdivision-of-section lines of sections 5 and 17, and the further subdivision of sections 5 and 17, Township 12 North, Range 56 East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

5. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the survey of the east boundary, a portion of the north boundary, and a portion of the subdivisional lines of Township 13 North, Range 55 East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare

an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

6. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the dependent resurvey of portions of the west boundaries of Townships 12 and 13 North, Range 56 East (Ruby Valley Guide Meridian) and the survey of the north boundary and the subdivisional lines of Township 13 North, Range 55½ East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

7. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the dependent resurvey of a portion of the south boundary of Township 14 North, Range 55 East, and the survey of the east boundary and a portion of the subdivisional lines, Township 13½ North, Range 55 East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

8. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the dependent resurvey of portions of the west boundaries of Townships 13 and 14 North, Range 56 East (Ruby Valley Guide Meridian) and a portion of the south boundary of Township 14 North, Range 55 East, and the survey of the subdivisional lines of Township 13½ North, Range 55 ½ East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

9. The Plat of Survey of the following described lands was officially filed at

the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 12, 2019:

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, Township 13 North, Range 56 East, Mount Diablo Meridian, Nevada, under Group No. 974, was accepted December 3, 2019. This survey was executed to define and mark boundaries and prepare an official land description for trust lands transferred by the Nevada Native Nations Land Act, Public Law 114-232, enacted October 7, 2016.

The surveys listed above, are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information.

Dated: January 10, 2020.

Michael O. Harmening,
Chief Cadastral Surveyor for Nevada.

[FR Doc. 2020-01003 Filed 1-21-20; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000L10200000.
PH0000LXSS006F0000;MO#4500141205]

Notice of Public Meeting: Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), will hold a meeting in Winnemucca, Nevada. The meeting is open to the public.

DATES: The meeting will be held on Thursday, March 5, 2020, from 8 a.m. to 4:30 p.m. However, the meeting could end earlier if discussions and presentations conclude before 4:30 p.m. The meeting will include two public comment periods at approximately 8:05 a.m. and 3:45 p.m.

ADDRESSES: The meeting will be held at the Winnemucca BLM Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada. Comments may also be submitted by email to lross@blm.gov with the words "SFNWGB RAC Feb. 2020 Comment" in the subject line.

Written comments should be sent to the following address and be received no later than February 18, 2020: SFNWGB RAC Feb. 2020 Comment, Attention: Lisa Ross, 5665 Morgan Mill Road, Carson City, NV 89703.

FOR FURTHER INFORMATION CONTACT: Lisa Ross by telephone at (775) 885-6107, or by email at lross@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Ms. Ross during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in Nevada. Agenda topics include wildfire update/use of Emergency Stabilization & Rehabilitation Funds, the 2019 Burning Man event, wild horses and burros, sage grouse, the Winnemucca Sand Dunes Recreation Area Management Plan, and District managers' updates.

Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations may contact Lisa Ross at the phone number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Colleen Dulin,

*District Manager, Carson City District,
Designated Federal Officer.*

[FR Doc. 2020-00968 Filed 1-21-20; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X LLUT912000 L13140000.PP0000]

Notice of Public Meeting, Utah Resource Advisory Council, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah RAC is scheduled to meet on March 9-10, 2020. The meeting will take place from 1 p.m. to 5 p.m. on March 9 and 8 a.m. to 5 p.m. on March 10.

ADDRESSES: The meeting will be held at the Best Western Plus Abbey Inn, 1129 S. Bluff Street, St. George, Utah 84770. Written comments to address the RAC may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, or via email to BLM_UT_External_Affairs@blm.gov with the subject line "Utah RAC Meeting."

FOR FURTHER INFORMATION CONTACT: Lola Bird, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539-4033; or email lbird@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1 (800) 877-8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The Utah RAC advises the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics will include a Color Country District overview; BLM updates; Desolation River Program Business Plan; Price Field Office Campground Business Plan; Fivemile Pass Special Area Business Plan; Washington County issues and projects; John D. Dingell, Jr. Conservation, Management, and Recreation Act implementation; electric bicycles update; statewide planning updates; Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area plan implementation; air quality monitoring; and other issues as appropriate. The final agenda will be posted on the Utah RAC website 30 days before the meeting at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC>.

The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals. The RAC will offer two 30-minute public comment periods. Depending on the number of

people wishing to comment and the time available, the time for individual comments may be limited. Written comments may also be sent to the BLM Utah State Office at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Utah RAC.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Detailed meeting minutes for the Utah RAC meeting will be maintained in the BLM Utah State Office and will be available for public inspection and reproduction during regular business hours within ninety (90) days following the meeting. Notes will also be posted to the Utah RAC website.

Authority: : 43 CFR 1784.4–2.

Anita Bilbao,

Acting State Director.

[FR Doc. 2020–00969 Filed 1–21–20; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081X3,
RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held on Wednesday, February 12, 2020, from 9:30 a.m. to approximately 5:00 p.m.; and Thursday, February 13, 2020, from 8:30 a.m. to approximately 3:00 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn & Home2 Suites by Hilton, Phoenix Tempe ASU Research Park, 7290 S Price Road, Tempe, Arizona 85283.

FOR FURTHER INFORMATION CONTACT: Lee Traynham, Bureau of Reclamation, telephone (801) 524–3752, email at ltraynham@usbr.gov, facsimile (801) 524–3807.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) Current basin hydrology and water year 2020 operations; (2) non-native fish issues; (3) tribal liaison report; and (4) science results from Grand Canyon Monitoring and Research Center staff. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at <https://www.usbr.gov/uc/progact/amp/amwg.html>.

Meeting Accessibility/Special Accommodations: The meeting is open to the public and seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive call-in information or a link to the live stream webcast should contact Lee Traynham, Bureau of Reclamation, Upper Colorado Basin—Interior Region 7, by email at ltraynham@usbr.gov, or by telephone at (801) 524–3752, to register no later than five (5) business days prior to the meeting. Individuals requiring special accommodations to access the public meeting should contact Ms. Traynham at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by

the AMWG members, written notice must be provided to Lee Traynham, Bureau of Reclamation, Upper Colorado Basin—Interior Region 7, 125 South State Street, Room 8100, Salt Lake City, Utah 84138, email at ltraynham@usbr.gov, or facsimile (801) 524–3807, at least five (5) business days prior to the meeting. Any written comments received will be provided to the AMWG members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Lee Traynham,

Chief, Adaptive Management Work Group, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2020–00974 Filed 1–21–20; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2019–0010; 201E1700D2
ET1SF0000.EAQ000 EEEE500000; OMB
Control Number 1014–0025]

Agency Information Collection Activities; Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all Supporting Documentation

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 23, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to <http://www.regulations.gov>. In the Search box, enter BSEE–2019–0010 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

• Email kye.mason@bsee.gov, fax (703) 787-1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014-0025 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at kye.mason@bsee.gov or by telephone at (703) 787-1607.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Throughout the regulations in 30 CFR part 250, BSEE requires the submissions of an Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation on

Forms BSEE-0123 and BSEE-0123S. The BSEE uses the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H₂S and to ensure that H₂S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H₂S and zones where the presence of H₂S is unknown. Furthermore, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, cementing programs, and blowout preventer (BOP) systems to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information submitted on Forms BSEE-0123 and -0123S.

Title of Collection: 30 CFR part 250, Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation.

OMB Control Number: 1014-0025.

Form Number: BSEE-0123 and BSEE-0123S.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents are comprised of Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all the potential respondents will submit information at

any given time, and some may submit multiple times.

Total Estimated Number of Annual Responses: 11,474.

Estimated Completion Time per Response: .5 hour to 150 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 78,084.

Respondent's Obligation: Responses are mandatory, are required to obtain or retain benefits.

Frequency of Collection: On occasion and varies by section.

Total Estimated Annual Nonhour Burden Cost: \$4,861,104.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Amy White,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020-00991 Filed 1-21-20; 8:45 am]

BILLING CODE 4310-VH-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-449 and 731-TA-1118-1121 (Second Review)]

Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty and countervailing duty orders on light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202-205-2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On August 5, 2019, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (84 FR 44330, August 23, 2019); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements are available from the Office of the Secretary and at the Commission’s website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission’s rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission’s notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized

applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission’s notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on April 27, 2020, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission’s rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, May 14, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 6, 2020. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on May 8, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission’s rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission’s rules; the deadline for filing is May 5, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission’s rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission’s rules. The deadline for filing posthearing briefs is May 22, 2020. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 22, 2020. On June 18, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may

submit final comments on this information on or before June 22, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission’s rules. All written submissions must conform with the provisions of section 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission’s rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission’s rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission’s rules.

By order of the Commission.

Issued: January 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00985 Filed 1–21–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1131]

Certain Wireless Mesh Networking Products and Related Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination on Section 337 Violation and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System ("EDIS") (<https://edis.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 ("Section 337") provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action. A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically: (1) A limited exclusion order directed to certain wireless mesh networking products and related components thereof imported, sold for importation, and/or sold after importation by respondents Emerson Electric Co. of St. Louis, Missouri; Emerson Process Management LLLP of Bloomington, Minnesota; Emerson Process Management Asia Pacific Private Limited of Singapore; Emerson

Process Management Manufacturing (M) Sdn. Bhd. of Nilai, Malaysia; Fisher-Rosemount Systems, Inc. of Round Rock, Texas; and Rosemount Inc. of Shakopee, Minnesota (collectively "Emerson"), and respondents Analog Devices, Inc. of Norwood, Massachusetts and Linear Technology LLC of Milpitas, California (collectively "Analog"); and (2) cease and desist orders against Emerson and Analog.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on January 10, 2020. Comments should address whether issuance of the remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the recommended orders are used in the United States;
- (ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) Explain how the LEO and CDO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on February 11, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper

copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1131") in a prominent place on the cover page and/or the first page. (See *Handbook for Electronic Filing Procedures*, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 15, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-00939 Filed 1-21-20; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1139]

Certain Electronic Nicotine Delivery Systems and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (“ALJ”) has issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT:

Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s Electronic Docket Information System (“EDIS”) (<https://edis.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930, as amended (“Section 337”), provides that if the Commission finds a violation, it shall direct that the concerned articles be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds such articles should

not be excluded from entry. 19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically, whether the Commission should issue: (1) A limited exclusion order (“LEO”) against infringing electronic nicotine delivery systems and components thereof that are imported into the United States, sold for importation, or sold in the United States after importation by respondents Eonsmoke, LLC (“Eonsmoke”) of Clifton, New Jersey and XFire, Inc. (“XFire”) of Stafford, Texas; and (2) cease and desist orders (“CDO”) against respondents Eonsmoke and XFire.

The Commission is interested in developing the record on the public interest in this investigation. The parties are to file their public interest submissions pursuant to 19 CFR 210.50(a)(4). Members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ’s Recommended Determination on Remedy and Bond that issued in this investigation on December 13, 2019. Comments should address whether issuance of an LEO or CDO in this investigation, if a violation is found, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the recommended orders are used in the United States;
- (ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) Indicate whether complainant, complainant’s licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO and CDO would impact consumers in the United States.

Written submissions from the public must be filed no later than the close of business on Friday, February 7, 2020.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission’s Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-1139”) in a prominent place on the cover page and/or first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission’s determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 15, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-00910 Filed 1-21-20; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; the Employment and Training Administration Quick Turnaround Surveys

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Employment and Training Administration Quick Turnaround Surveys." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 23, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Charlotte Schifferes by telephone at (202) 693-3655, TTY (202) 693-7755, (these are not toll-free numbers) or by email at schifferes.charlotte@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, Attention: Charlotte Schifferes, 200 Constitution Avenue NW, Room N-5641, Washington, DC 20210; by email: schifferes.charlotte@dol.gov; or by Fax (202) 693-2766.

FOR FURTHER INFORMATION CONTACT: Charlotte Schifferes by telephone at (202) 693-3655 (this is not a toll-free number) or by email at schifferes.charlotte@dol.gov.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

ETA is soliciting comments regarding a revision and extension of a currently approved generic information collection. The collection would allow for a quick review process by OMB, over the next three years, of a series of 8 to 20 short surveys relevant to the broad spectrum of programs administered by ETA, including those authorized by the Workforce Innovation and Opportunity Act (WIOA) of 2014 and other statutes. The surveys would cover a variety of issues, including but not limited to the governance, administration, funding, service design, and delivery structure in programs. Each survey would be short (typically 10-30 questions) and, depending on the nature of the survey, may be administered to state workforce agencies, local workforce boards, American Job Centers, employment service offices, or other entities involved in employment and training or related activities relevant to ETA. Each survey will be designed on an ad hoc basis and will focus on topics of pressing policy or research interest. Examples of broad topic areas include but are not limited to:

- State and local management information systems,
- New processes and procedures,
- Services to different target groups,
- Integration and coordination with other programs, and
- Local workforce investment board membership and training.

ETA is seeking an extension and revision of the current collection in order to fulfill a continuing need to conduct these "quick turnaround" surveys in order to obtain timely information that identifies the nature, scope and magnitude of various practices or problems, and to meet its obligations to develop high quality policy, research, administrative guidance, regulations, and technical assistance. ETA will request data in these surveys that are not otherwise available. Other research and evaluation efforts, including case studies or long-range evaluations, either cover only a limited number of sites or take many years for data to be gathered and analyzed. Administrative information, including quarterly or annual data

reported by states and local areas do not provide information on key operational practices and issues of interest. Thus, ETA has no alternative mechanism for collecting information that identifies the scope and magnitude of emerging issues and provides the information on a quick turnaround basis. ETA will make every effort to coordinate the "quick turnaround" surveys with other data collections in ETA or other parts of the Department of Labor, in order to ease the burden on local, state, and other respondents, to avoid duplication, and to fully explore how interim data and information from each study can be used to inform other studies.

Information from the quick turnaround surveys will complement but not duplicate other ETA reporting requirements or evaluation studies. Section 169 of WIOA, P.L. 113-128, authorizes this information collection for both evaluations [Section 169 (a)] and research activities [Section 169 (b)].

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0436.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision of Currently Approved Collection.

Title of Collection: Employment and Training Administration Quick Turnaround Surveys.

Form: Not Applicable.

OMB Control Number: 1205–0436.

Affected Public: State, Local, and Tribal Governments; Private Sector—businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 7,000.

Frequency: Various.

Total Estimated Annual Responses: 2,333.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden

Hours: 2,500 hours.

Total Estimated Annual Other Cost Burden: \$0.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2020–00911 Filed 1–21–20; 8:45 am]

BILLING CODE 4510–FM–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hazardous Conditions Complaint

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mining Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, “Hazardous Conditions Complaint” to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 21, 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=201910-1219-001 (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 by email at 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–MSHA, 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 by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Hazardous Conditions Complaint information collection. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines. Under Section 103(g) of Mine Act, a representative of miners, or any individual miner where there is no representative of miners, may submit a written or oral notification of an alleged violation of the Mine Act or a mandatory standard or that an imminent danger exists. The notifier has the right

to obtain an immediate inspection by MSHA. A copy of the notice must be provided to the operator, with individual miner names redacted. MSHA regulations at 30 CFR part 43 implement section 103(g) of the Mine Act. These regulations provide the procedures for submitting notification of the alleged violation and the actions that MSHA must take after receiving the notice. Although the regulations contain a review procedure (required by section 103(g)(2) of the Mine Act) whereby a miner or a representative of miners may in writing request a review if no citation or order is issued as a result of the original notice, the option is so rarely used that it was not considered in the burden estimates.

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 1219–0014.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 20, 2019 (84 FR 49560).

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 1219–0014. 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-MSHA.

Title of Collection: Hazardous Conditions Complaint.

OMB Control Number: 1219-0014.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,976.

Total Estimated Number of Responses: 1,976.

Total Estimated Annual Time Burden: 395 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 15, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020-00989 Filed 1-21-20; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mining Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed" to the Office of Management

and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 21, 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=201910-1219-004 (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 by email at 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-MSHA, 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 by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed information collection.

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for

the protection of life and prevention of injuries in coal and metal and nonmetal mines. MSHA allows operators to use air from a belt air course to ventilate a working section, or an area where mechanized mining equipment is being installed or removed, only under certain conditions. The belt air use must be evaluated and approved by the district manager in the mine ventilation plan and operators must follow a number of other requirements that provide additional protection.

The Mine Act is supported by a variety of requirements contained in 30 CFR Sections 75.350(b), 75.351(b)(3-4), 75.351(j), 75.351(m), 75.351(n)(2), 75.351(o)(1)(i-iii), 75.351(o)(3), 75.351(p), 75.351(q)(3), 75.352(a-c), 75.371(hh), 75.371(kk), 75.350(b)(6), 75.371(ll), 75.371(mm), 75.371(nn), 75.371(oo), and 75.371(pp).

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 1219-0138.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 31, 2019 (84 FR 58412).

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 1219-0138. 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-MSHA.

Title of Collection: Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed.

OMB Control Number: 1219-0138.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 12.

Total Estimated Number of Responses: 161.

Total Estimated Annual Time Burden: 2,478 hours.

Total Estimated Annual Other Costs Burden: \$38,640.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 15, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020-00990 Filed 1-21-20; 8:45 am]

BILLING CODE 4510-FN-P

POSTAL REGULATORY COMMISSION

[Docket No. T2020-1; Order No. 5406]

Income Tax Review

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the calculation of the assumed Federal income tax on competitive products income for Fiscal Year 2019. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 4, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3634 and 39 CFR 3060.40 *et seq.*, the Postal Service filed its calculation of the assumed Federal income tax on competitive products income for fiscal year (FY) 2019.¹ The calculation details the FY 2019 competitive product revenue and expenses, the competitive products net income before tax, and the assumed Federal income tax on that net income.

II. Notice of Commission Action

In accordance with 39 CFR 3060.42, the Commission establishes Docket No. T2020-1 to review the calculation of the assumed Federal income tax and supporting documentation.

The Commission invites comments on whether the Postal Service's filing in this docket is consistent with the policies of 39 U.S.C. 3634 and 39 CFR 3060.40 *et seq.* Comments are due no later than March 4, 2020. The Postal Service's filing can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Jennaca D. Upperman to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. T2020-1 to consider the calculation of the assumed Federal income tax on competitive products for FY 2019.

2. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than March 4, 2020.

¹ See Notice of the United States Postal Service of Submission of the Calculation of the FY 2019 Assumed Federal Income Tax on Competitive Products, January 10, 2020.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2020-00932 Filed 1-21-20; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: January 17, 2020, at 9:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Matters.
2. Financial Matters.
3. Strategic Matters.
4. Personnel Matters.

On January 17, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION:

Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-1000. Telephone: (202) 268-4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2020-01116 Filed 1-17-20; 4:15 pm]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87971; File No. SR-ICC-2019-013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Rules To Reflect the ISDA NTCE Supplement

January 15, 2020.

I. Introduction

On November 15, 2019, ICE Clear Credit LLC ("ICE Clear Credit" or "ICC") filed with the Securities and

Exchange Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to make certain changes to the ICC Clearing Rules (the “Rules”)³ to implement the 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (the “NTCE Supplement”) that are being adopted in the broader credit default swap (“CDS”) market to address so-called narrowly tailored credit events and related matters. The proposed rule change was published for comment in the **Federal Register** on December 2, 2019.⁴ The Commission did not receive comments on the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

Following certain events in the CDS⁵ market, the International Swaps and Derivatives Association, Inc. (“ISDA”), in consultation with market participants, developed and published the NTCE Supplement.⁶ The NTCE Supplement reflects an effort by ISDA to address so-called narrowly-tailored credit events. According to ISDA, a narrowly-tailored credit event is an arrangement between a participant in the CDS marketplace and a corporation, through which the corporation triggers a credit event on CDS covering the corporation, thereby increasing payment to the buyers of CDS protection on the corporation while minimizing the impact on the corporation.⁷

The NTCE Supplement, if applied to a CDS transaction, would make two principal changes to the 2014 ISDA Credit Derivatives Definitions to address

narrowly-tailored credit events.⁸ First, the NTCE Supplement would change the definition of the “Failure to Pay” credit event to exclude certain narrowly tailored credit events through a new Credit Deterioration Requirement. The Credit Deterioration Requirement would provide that a failure of a corporation to make a payment on an obligation would not constitute a Failure to Pay Credit Event triggering CDS on that corporation if the failure does not directly or indirectly either result from, or result in, a deterioration in the creditworthiness or financial condition of the corporation.⁹ Thus, a narrowly tailored or manufactured failure to pay that does not reflect or result in a credit deterioration by a corporation would not constitute a Credit Event for CDS Contracts that incorporate the NTCE Supplement and thus would not necessarily trigger payment to buyers of CDS protection. The NTCE Supplement would also provide guidance related to the factors that would be relevant to determining whether the Credit Deterioration Requirement had been met, which determination would, under the 2014 Definitions, in the ordinary course be made by the relevant Credit Derivatives Determinations Committee.

Second, the NTCE Supplement would reduce the amount of payout a CDS protection buyer could claim in certain circumstances by imposing a new provision for Fallback Discounting. Fallback Discounting would discount a CDS protection buyer’s claim for payout under a CDS contract where that claim for payout is based on an obligation issued by a corporation at a discount.¹⁰ This would address the potential scenario where a corporation agrees to issue a bond at a substantial discount to its principal amount and the bond is delivered in settlement of a CDS at its full principal amount. In this scenario, Fallback Discounting would prevent a buyer of CDS protection from using the full principal amount of the bond issued at a discount as a basis for payout under the CDS contract.

B. Changes to the ICC Clearing Rules

Because ICC will clear and settle CDS contracts to which the NTCE Supplement will apply, it must ensure that its relevant Rules accurately reflect the changes described above that will be

implemented by the NTCE Supplement. Accordingly, the proposed rule change would ensure that the changes being implemented by the NTCE Supplement are accurately reflected in its relevant Rules for both new and existing cleared transactions that incorporate the 2014 ISDA Credit Derivatives Definitions.¹¹ For this purpose, the proposed ICC amendments will apply to all cleared CDS contracts with corporate (*i.e.*, non-sovereign) reference entities.¹²

Specifically, ICC would amend Rule 20-102 to include new definitions for (i) the “NTCE Supplement,” which would be the Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions published by ISDA on July 15, 2019, (ii) “NTCE Amending Contracts,” which would be those Contracts being amended to incorporate the NTCE Supplement as specified in a list to be maintained by ICC, and (iii) the “NTCE Effective Date,” which will be January 27, 2020 (the date of implementation of the amendment), or such later date as designated by ICC by Circular.¹³

In addition, ICC would amend each relevant subchapter of Chapter 26 of the Rules to implement the NTCE Supplement and ensure that relevant contracts already being cleared and settled by ICE Clear Credit but that do not reference the new standard terms supplement are fungible with new contracts cleared and settled by ICE Clear Credit that do reference the new standard terms supplement.¹⁴ One set of amendments would apply to index CDS transactions and a separate but substantially similar set of amendments would apply to single-name CDS transactions.¹⁵

In the case of index CDS, for CDX.NA Index CDS transactions, the definition of CDX.NA Untranching Terms Supplement in Rule 26A-102 in subchapter 26A would be amended to include the new 2020 standard terms supplement for such transactions, as published by ISDA, which incorporates the NTCE Supplement, along with conforming changes to cross-references.¹⁶ Rule 26A-316 would be amended by adding a new paragraph (e), which provides that open positions in CDX.NA Untranching Contracts that are NTCE Amending Contracts would be amended, effective as of the NTCE Effective Date, to reference the updated 2020 standard terms supplement in lieu

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

⁴ Securities Exchange Act Release No. 87612 (November 25, 2019), 84 FR 66036 (Dec. 2, 2019) (SR-ICC-2019-013) (“Notice”).

⁵ The following description is substantially excerpted from the Notice. See Notice, FR at 66036.

⁶ See ISDA Board Statement on Narrowly Tailored Credit Events available at <https://www.isda.org/2018/04/11/isda-board-statement-on-narrowly-tailored-credit-events/>; see also Joint Statement on Opportunistic Strategies in the Credit Derivatives Market (“The continued pursuit of various opportunistic strategies in the credit derivatives markets, including but not limited to those that have been referred to as ‘manufactured credit events,’ may adversely affect the integrity, confidence and reputation of the credit derivatives markets, as well as markets more generally.”) available at <https://www.sec.gov/news/press-release/2019-106>.

⁷ See ISDA Board Statement on Narrowly Tailored Credit Events, available at <https://www.isda.org/2018/04/11/isda-board-statement-on-narrowly-tailored-credit-events/>.

⁸ See ISDA 2019 NTCE Protocol FAQ, available at <https://www.isda.org/protocol/isda-2019-ntce-protocol>.

⁹ See ISDA 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (Published on July 15, 2019), available at <https://www.isda.org/a/KDqME/Final-NTCE-Supplement.pdf>.

¹⁰ *Id.*

¹¹ Notice, 84 FR at 66037.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

of the standard terms supplement previously in effect.¹⁷ This will have the effect of converting all existing CDX.NA Untranchured Contracts to reference the new standard terms supplement, such that they will be fungible with new CDX.NA Untranchured Contracts, which will also reference the new standard terms supplement.¹⁸ New paragraph (e) would also provide that the amendments will be effective regardless of whether any transaction record in the Deriv/SERV warehouse is updated to reflect the change.¹⁹

Substantially similar changes for other categories of index CDS would also be made in subchapters 26F (for iTraxx Europe Untranchured Contracts) and 26J (for iTraxx Asia/Pacific Untranchured Contracts).²⁰

In the case of single-name CDS, for Standard North American Corporate (SNAC) Contracts, in subchapter 26B, Rule 26B–616 would be amended by adding a new paragraph (c), which provides that open positions in SNAC Contracts that are NTCE Amending Contracts would be amended, effective as of the NTCE Effective Date, to incorporate the NTCE Supplement and specify that the Fallback Discounting and Credit Deterioration Requirement provisions will be applicable.²¹ The contracts would also be amended to reference the new ISDA physical settlement matrix, to be published as of the NTCE Effective Date (or other relevant implementation date as determined by ICC).²² The amendments will have the effect of converting existing SNAC Contracts to reference the updated physical settlement matrix, such that they will be fungible with new SNAC Contracts, which will also reference that matrix.²³ New paragraph (c) would also provide that the amendments will be effective regardless of whether any transaction record in the Deriv/SERV warehouse is updated to reflect the change.²⁴

Substantially similar changes for other categories of single-name CDS would also be made in subchapters 26G (for Standard European Corporate Contracts), 26H (for Standard European Financial Corporate Contracts), 26M (for Standard Australian Corporate Contracts), 26N (for Standard Australia Financial Corporate Contracts), 26O (for Standard Asia Corporate Contracts), 26P

(for Standard Asia Financial Corporate Contracts) and 26Q (for Standard Emerging Market Corporate Contracts).²⁵

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.²⁶ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁷ and Rule 17Ad–22(d)(1) thereunder.²⁸

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.²⁹

As described above, the NTCE Supplement would amend the underlying legal terms applicable to CDS contracts to which it applies by, among other things, limiting Credit Events to those that reflect a deterioration in the creditworthiness or financial condition of the relevant company. It also would reduce the amount of payout a CDS protection buyer could claim in certain circumstances where the claim for payout is based on an obligation issued by a company at a discount. Further, because ISDA has set an implementation date of January 27, 2020, the NTCE Supplement will apply to all single-name CDS contracts and components of index CDS contracts that incorporate the 2014 ISDA Credit Derivatives Definitions entered into on or after that date.

As noted above, because ICC will clear and settle CDS contracts that are subject to the changes being made by the NTCE Supplement, the proposed rule change would amend the ICC Clearing Rules to incorporate the amendments resulting from the NTCE Supplement, thereby ensuring that ICC's

Rules accurately reflect and appropriately apply the legal terms and conditions applicable to such CDS contracts, and that existing contracts that do not reference the new standard terms supplement will be fungible with new contract that do.

In the Commission's view, a lack of clarity in the underlying legal terms and conditions applicable to the transactions that ICC clears and settles could hinder ICC's ability to promptly and accurately clear and settle such transactions. Likewise, disputes regarding the applicable legal terms and conditions of such transactions could lead to disputes or confusion regarding the necessary and appropriate margin submitted in connection with such transactions, thereby threatening ICC's ability to safeguard such margin. Accordingly, by making the changes described above, and in particular by ensuring the ICC's Rules accurately reflect and appropriately apply the legal terms and conditions applicable to the CDS contracts that are cleared and settled by ICC and that existing contracts that do not reference the new standard terms supplement will be fungible with new contract that do, the Commission believes that the proposed rule change would help ensure that ICC's Rules continue to promote the prompt and accurate clearance and settlement of such the CDS contracts and assure the safeguarding of securities and funds in ICC's custody and control. For these same reasons the Commission also finds that the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.³⁰

B. Consistency With Rule 17Ad–22(d)(1)

Rule 17Ad–22(d)(1) requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.³¹

As discussed above, the proposed rule change would help to clarify and ensure that ICC's Rules accurately reflect and appropriately apply the legal terms and conditions applicable to the CDS contracts that are cleared and settled by ICC and that existing contracts that do not reference the new standard terms supplement will be fungible with new contract that do. The Commission believes that this, in turn, would help

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Notice, 84 FR at 66037–66038.

²⁶ 15 U.S.C. 78s(b)(2)(C).

²⁷ 15 U.S.C. 78q–1(b)(3)(F).

²⁸ 17 CFR 240.17Ad–22(d)(1).

²⁹ 15 U.S.C. 78q–1(b)(3)(F).

³⁰ 15 U.S.C. 78q–1(b)(3)(F).

³¹ 17 CFR 240.17Ad–22(d)(1).

ensure that the ICC Clearing Rules provide a consistent and enforceable legal basis for clearing and settling CDS contracts to which the NTCE Supplement applies in light of the amendments made by the NTCE Supplement.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(1).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act³² and Rule 17Ad-22(d)(1) thereunder.³³

It is therefore ordered pursuant to Section 19(b)(2) of the Act³⁴ that the proposed rule change (SR-ICC-2019-013), be, and hereby is, approved.³⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-00915 Filed 1-21-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87978; File No. SR-NYSEArca-2020-03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Introduce a New Lead Market Maker Credit

January 15, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 2, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to (1) introduce a new Lead Market Maker (“LMM”) credit, (2) introduce a new LMM rebate, and (3) replace the rebate applicable to ETP Holders and Market Makers with a monthly rebate payable on a per-security basis that is tied to quoting requirements in NYSE Arca-listed securities. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) introduce a new LMM³ credit, (2) introduce a new LMM rebate, and (3) replace the rebate applicable to ETP Holders⁴ with a monthly rebate payable on a per-security basis that is tied to quoting requirements in NYSE Arca-listed securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders and LMMs to send

additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 2, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.”⁵

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁶ Indeed, equity trading is currently dispersed across 13 exchanges,⁷ 31 alternative trading systems,⁸ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for November 2019, no single exchange has more than 18% market share (whether including or excluding auction volume).⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in November 2019, the Exchange had 7.6% market share of executed volume of equity trades (excluding auction volume).¹⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁶ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).

⁷ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share, <http://www.sec.gov/fast-answers/divisionsmarketregmr-exchangesshtml.html>.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

³² 15 U.S.C. 78q-1(b)(3)(F).

³³ 17 CFR 240.17Ad-22(d)(1).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

⁴ All references to ETP Holders in connection with this proposed fee change include Market Makers.

exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders and LMMs can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders and LMMs on the Exchange, and is intended to provide ETP Holders and LMMs an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

The Exchange currently provides incentives in the form of tiered and/or incremental credits to ETP Holders and LMMs who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that participants send to the Exchange.

As described in greater detail below, the Exchange proposes the following changes:

- Adopt a new incremental credit of \$0.00005 per share if an LMM is registered as the LMM in at least 50 but less than 75 Less Active ETP Securities;
- Adopt a new monthly rebate that ranges between \$100 per security and \$50 per security payable to LMMs that quote and trade in NYSE Arca-listed Tape B Securities that are not actively traded; and
- Adopt an ETF Incentive Program that provides a monthly rebate on a per-security basis to ETP Holders that meet certain quoting requirements.

LMM Credits

The Exchange currently provides tier-based incremental credits to LMMs¹¹ and to ETP Holders affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. Specifically, LMMs that are registered as the LMM in Tape B Securities that have a consolidated average daily volume (“CADV”) in the previous month of less than 100,000 shares, or 0.0010% of Consolidated Tape B ADV, whichever is greater (“Less Active ETP Securities”), and the ETP Holders affiliated with such LMMs,

currently receive an additional credit for orders that provide displayed liquidity to the Book in any Tape B Securities that trade on the Exchange.¹² The current incremental credits and volume thresholds are as follows:

- An additional credit of \$0.0004 per share if an LMM is registered as the LMM in at least 300 Less Active ETP Securities
- An additional credit of \$0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 300 Less Active ETP Securities
- An additional credit of \$0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities
- An additional credit of \$0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities

With this proposed rule change, the Exchange proposes to adopt a new incremental credit of \$0.00005 per share if a LMM is registered as the LMM in at least 50 but less than 75 Less Active ETP Securities.

The purpose of the proposed rule change is to encourage LMMs and ETP Holders to enhance the market quality in Tape B securities that are listed and traded on the Exchange by offering incremental credits, which would support the quality of price discovery in Less Active ETP Securities on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants. The Exchange believes that providing increased credits to LMMs and ETP Holders that are affiliated with a LMM that add liquidity in Tape B securities to the Exchange could lead to more LMMs to register to quote and trade in Less Active ETP Securities. The Exchange believes the incremental credit for adding liquidity could also encourage competition in Tape B securities quoted and traded on the Exchange.

The Exchange does not know how much order flow LMMs and ETP Holders choose to route to other exchanges or to off-exchange venues. The incremental credits in NYSE Arca-listed securities are available to all LMMs that are registered as the LMM in a security, and to ETP Holders that are affiliated with a LMM. Currently, there are 2 LMMs that meet the requirements of the proposed tier and that would qualify for the incremental credit.¹³

¹² The Exchange defines “affiliate” to “mean any ETP Holder under 75% common ownership or control of that ETP Holder.” See Fee Schedule, NYSE Arca Marketplace: General.

¹³ As of November 27, 2019, there are 13 LMMs on the Exchange that could qualify for the

Without having a view of a LMM’s activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in more LMMs sending their orders in NYSE Arca-listed securities to the Exchange to qualify for the existing credits or whether this proposed rule change would result in LMMs to send more of their orders in NYSE Arca-listed securities to the Exchange to qualify for the proposed new credits. The Exchange cannot predict with certainty how many LMMs would avail themselves of this opportunity but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

Additionally, with this proposed rule change, the Exchange proposes to adopt a new rebate as another incentive for LMMs to actively improve market quality in the opening and closing auctions in NYSE Arca-listed securities that are not actively traded. As proposed, LMMs registered as the LMM in a NYSE Arca-listed security where the security has been listed on NYSE Arca for an entire calendar month would be eligible for a rebate payable each month provided that there has been either an opening auction or a closing auction of at least one round-lot conducted in the security each day during the billing month, and where, in the case of an opening auction, the security’s opening auction price is within 1.50% of the Auction Reference Price (as defined in Rule 7.35–E), and in the case of a closing auction, the security’s closing auction price is within 0.50% of the Auction Reference Price, for every auction in that security during the billing month. Qualifying LMMs in a security that meets the criteria described above would receive a monthly rebate, as follows:

- \$100 per security for each security that had a CADV in the previous month of less than 100,000 shares;
- \$75 per security for each security that had a CADV in the previous month between 100,000 shares and up to 175,000 shares;
- \$50 per security for each security that had a CADV in the previous month between 175,000 shares and up to 250,000 shares.

The purpose of the proposed rule change is to incentivize LMMs to increase auction liquidity in less liquid NYSE Arca-listed securities to support price discovery in the Exchange’s opening and closing auctions for the

incremental rebates for Less Active ETP Securities, all of whom are affiliated with an ETP holder.

¹¹ The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

benefit of all market participants. The Exchange believes that providing monthly rebates on a per-security basis could lead to more LMMs to register in less liquid securities and encourage greater participation in the opening and closing auctions on the Exchange. The Exchange believes the proposed monthly rebate, in addition to the incremental credit for adding liquidity, could encourage competition in Tape B securities quoted and traded on the Exchange.

ETF Incentive Program

The Exchange proposes to replace the rebate applicable to ETP Holders with a monthly rebate payable on a per-security basis that is tied to quoting requirements in NYSE Arca-listed securities. The Exchange believes that the proposed ETF Incentive Program ("EIP Program") would encourage ETP Holders to maintain better market quality in NYSE Arca-listed securities, and, in particular, in lower volume securities.

The Exchange currently offers an Exchange Traded Fund Liquidity Provider Program ("ELP Program") pursuant to which the Exchange provides an incremental credit of \$0.0001 per share to ETP Holders for providing displayed liquidity that result in an execution to ETP Holders that meet prescribed quoting standards in NYSE Arca-listed securities that have a CADV in the previous month of less than 250,000 shares. Under the ELP Program, for each billing month, in at least 50 qualifying securities, an ETP Holder must quote at the National Best Bid or Offer ("NBBO") for at least an average of 15% of the time, and display at least 2,500 shares that are priced no more than 2% away from the NBBO at least 90% of the time. The Exchange proposes to eliminate the ELP Program and replace it with the EIP Program.

The Exchange is now proposing to adopt an incentive program that would provide ETP Holders with a monthly rebate for each NYSE Arca-listed security that has been listed on the Exchange for an entire calendar month and that had a CADV in the previous month of less than 10,000 shares ("EIP Security"). To qualify for the proposed rebate, an EIP Security must have a time-weighted quoting size at the NBBO. Specifically, for each billing month, ETP Holders must quote at the NBBO with average time-weighted minimum bid and minimum offer of at least 300 on each side ("Share Size"). An ETP Holder with the largest Share Size in an EIP Security would receive a rebate of \$60 per security that meets the Share Size requirements for the billing

month. An ETP Holder with the second largest Share Size in an EIP Security would receive a rebate of \$40 per security. No registration is required to participate in the program.

For example, assume a NYSE Arca-listed security had a CADV in the previous month of 5,000 shares, and is listed on the Exchange for every day of a billing month. Further, assume the following:

- ETP Holder 1 has a time-weighted bid size of 800 shares and a time-weighted offer size of 600 shares, for an average Share Size of 700 shares.
- The LMM registered as the LMM in the security has a time-weighted bid size of 400 shares and a time-weighted offer size of 800 shares, for an average Share Size of 600 shares.
- ETP Holder 2 has a time-weighted bid size of 2,000 shares and a time-weighted offer size of 200 shares, for an average Share Size of 1,100 shares.

In the example above, ETP Holder 1 would qualify for the \$60 rebate with an average Share Size of 700 shares, and the LMM would qualify for the \$40 rebate with an average Share Size of 600 shares. While ETP Holder 2 has the largest average Share Size with 1,100 shares, ETP Holder 2 had a time-weighted offer size of 200 shares, which is less than the 300 share requirement, and therefore ETP Holder 2 would not qualify for the rebate.

The Exchange will calculate the Share Size for each ETP Holder, on a daily basis, up to and including the last trading day of a calendar month to determine at the end of each month whether an ETP Holder is meeting the requirements of the EIP Program.

The purpose of the proposed rule change is to provide superior market quality and price discovery for NYSE Arca-listed securities, specifically securities that are less active, through a quoting size requirement that would also promote liquidity in the opening and closing auction in such securities. The proposed program is intended to provide a more meaningful incentive to ETP Holders to provide liquidity in less active securities. The proposed EIP Program would allow the Exchange to provide financial incentives to ETP Holders as long as they meet certain prescribed quoting criteria. The Exchange believes this type of an incentive, which provides a rebate on a per-security basis rather than on a per-transaction basis, would encourage ETP Holders to provide meaningful quotes in the less active securities that are the focus of the proposed EIP Program.

Additionally, for newly listed and low volume ETP securities, the cost to a firm for making a market, such as holding

inventory in the security, is often not fully offset by the revenue through rebates provided by the Exchange. In some cases, ETP Holders may even operate at a loss in new and low volume ETFs. The Exchange believes the proposed EIP Program, which would compensate ETP Holders on a per-security basis as long as they meet the prescribed quoting requirement, is a more deterministic program from an ETP Holder's perspective. The ETP Holder would decide how many, if any, low volume securities in which it wants to provide tight and deep markets. The more securities it provides heightened quoting in, the more the ETP Holder could collect in the form of the proposed per-security rebate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ 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 Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. 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."¹⁶

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

and competitive.”¹⁷ Indeed, equity trading is currently dispersed across 13 exchanges,¹⁸ 31 alternative trading systems,¹⁹ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity 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. With respect to non-marketable order which provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

The Exchange believes the proposed rule change to introduce a new \$0.00005 per share incremental credit is reasonable because it is intended to encourage LMMs to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes the proposed rule change is reasonable and appropriate in that the credits are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed incremental credit is similar to market quality incentive programs already in place on other markets, such as the Qualified Market Maker incentive on the Nasdaq Stock Market LLC (“Nasdaq”), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery by quoting at the National Best Bid and Offer in a large number of securities. In return, Nasdaq provides such member with an

incremental rebate.²⁰ Nasdaq PHLX LLC (“PHLX”) also provides enhanced credits to Market Makers on certain volumes based on an affiliate’s activity. Specifically, PHLX offers a tiered Customer Rebate Program that qualifies either a Specialist or Market Maker or its affiliate under Common Ownership²¹ to an additional rebate provided the Specialist or Market Maker has reached the Monthly Market Maker Cap.²² The Exchange believes that providing increased credits to ETP Holders and Market Makers that are affiliated with a LMM that add liquidity in Tape B securities to the Exchange is reasonable because the Exchange believes that by providing increased rebates to affiliated ETP Holders and Market Makers of a LMM, more LMMs will register to quote and trade in Less Active ETP Securities. The Exchange believes the proposed incremental credit for adding liquidity is also reasonable because it will encourage liquidity and competition in Tape B securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed fee change will incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in Tape B securities to the benefit of all market participants.

Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for LMMs from the substantial amounts of liquidity present on the Exchange. All participants, including LMMs, would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes that proposal to adopt market quality based incentives under the proposed EIP Program is a reasonable means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and the

Exchange is not the only venue for listing ETPs. Competition in ETPs is further exacerbated by the fact that listings can and do transfer from one listing market to another. The proposed EIP Program is intended to help the Exchange compete as an ETP listing venue. Further, the Exchange notes that the proposed incentives are not transaction fees, nor are they fees paid by participants to access the Exchange. Rather, the proposed rebates are based on achieving certain objective market quality metrics. The Exchange believes providing monthly rebates for the two largest Share Sizes in less active securities will allow ETP Holders to anticipate their revenue as participants of the EIP Program and will incentivize ETP Holders to participate in the EIP Program.

Given the proposed EIP Program is a new program, the Exchange cannot be certain that ETP Holders will choose to actively compete for this incentive. For ETP Holders that do choose to actively participate by increasing their quoting at the NBBO with a time-weighted minimum bid and minimum offer of at least 300 shares on each side of their quote, the Exchange generally expects ETP Holders would receive payments comparable to what they currently receive under the ELP Program, with the potential for additional upside when they meet the quoting requirement in a greater number of less active securities.

The Exchange believes that eliminating the existing ELP Program is reasonable because the Exchange is not required to maintain the program and the Exchange is proposing to implement the new EIP Program in its place, as described above. The Exchange notes that only 2 ETP Holders qualified for the ELP Program in November 2019.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange’s market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change to amend the LMM credits are equitable because they provide discounts that are reasonably related to the value to the Exchange’s market quality associated with higher volumes. The Exchange further believes that the proposed incremental rebate is equitable because it is consistent with the market quality and competitive benefits associated with the fee program and because the magnitude of the additional rebate is not unreasonably high in

²⁰ See Equity 7 Pricing Schedule, Section 114. Market Quality Incentive Programs, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F2%5F3&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dlcrules%2F>.

²¹ The term “Common Ownership” is defined as meaning “members or member organizations under 75% common ownership or control.” See PHLX fee schedule, at <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>.

²² See Options 7 Pricing Schedule, Section I, B. Customer Rebate Program, at <http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Dlcrules%2F>. See also Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73906 (December 9, 2013) (SR-Phlx-2013-114).

¹⁷ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final rule).

¹⁸ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

¹⁹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlstlist.htm>.

comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange believes that it is equitable to offer increased rebates to LMMs as LMMs are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not. When PHLX adopted its proposal to provide enhanced credits, it noted its belief that the additional rebate it provides was equitable, and not unfairly discriminatory because, among other things, PHLX Specialists and Market Makers “have burdensome quoting obligations,” to the market that other market participants do not, and “also serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace.”²³ PHLX further noted that the “proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants.” The Exchange also believes that allowing ETP Holders to receive enhanced credits based on activities of their affiliates is equitable and not unfairly discriminatory because the Exchange believes that ETP Holders affiliated with LMMs may qualify to earn enhanced credits in recognition of their shared economic interest, which includes the heightened obligations imposed on LMMs. ETP Holders unaffiliated with LMMs do not share the same type of economic interests. Further, ETP Holders not affiliated with a LMM have an opportunity to establish such affiliation by several means, including but not limited to, a business combination or the establishment of their own market making operation, which each unaffiliated firm has the potential to establish.

The Exchange believes that the proposed EIP Program represents an equitable allocation of payments because ETP Holders would be required to meet prescribed quoting requirements in order to qualify for the payments, as described above. Where an ETP Holder does not achieve the largest Share Size in an EIP Security or second largest Share Size in an EIP Security, it will not receive the payments. Further, all ETP Holders on the Exchange are eligible to participate in the program and could do so by simply meeting the quoting requirement. The Exchange has designed the EIP Program to be sustainable over the long-term and

generally expects that payments made to ETP Holders under the program will be comparable to payments the Exchange currently makes under the ELP Program. As such, the Exchange believes that the proposal represents an equitable allocation of payments.

The Exchange believes that eliminating the existing ELP Program is equitable because the Exchange is not required to maintain the program and the Exchange is eliminating the program for all ETP Holders.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, LMMs and ETP Holders are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to adopt an additional incremental credit applicable to a LMM, and ETP Holders affiliated with such LMM, for orders that provide displayed liquidity in NYSE Arca-listed securities for which they are registered as the LMM, as the proposed credits would be provided on an equal basis to all such participants. Further, the Exchange believes the proposed additional incremental credit would incentivize LMMs that meet the current tiered requirements to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange’s market quality associated with higher volume.

The proposal to introduce an additional LMM credit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed threshold would be applied to all similarly situated LMMs, who would all be eligible for the same credit on an equal basis. Accordingly, no LMM already operating on the Exchange would be disadvantaged by this allocation of fees.

The Exchange believes that the proposed EIP Program is not unfairly discriminatory because ETP Holders would be required to meet prescribed quoting requirements in order to qualify for the payments, as described above. Where an ETP Holder does not achieve the largest Share Size in an EIP Security or second largest Share Size in an EIP Security, it will not receive the payments. Further, all ETP Holders on the Exchange are eligible to participate

in the program and could do so by simply meeting the quoting requirement. The Exchange has designed the EIP Program to be sustainable over the long-term and generally expects that payments made to ETP Holders under the program will be comparable to payments the Exchange currently makes under the ELP Program. As such, the Exchange believes that the proposal is not unfairly discriminatory.

The Exchange believes that eliminating the existing ELP Program is not unfairly discriminatory because the Exchange is not required to maintain the program and the Exchange is eliminating the program for all ETP Holders.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁴ 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. Instead, as discussed above, the Exchange believes that the proposed changes 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 ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”²⁵

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the new incremental credit applicable to LMMs would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater

²⁴ 15 U.S.C. 78f(b)(8).

²⁵ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

²³ See Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73906 (December 9, 2013) (SR–Phlx–2013–114).

liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs, to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed new incremental credit would be applicable to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. The Exchange believes the proposed EIP Program would enhance competition as it is intended to increase the Exchange's competitiveness in NYSE Arca-listed ETPs, and all ETP Holders would be able to participate in the program uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders to maintain their competitive standing.

Intermarket Competition. The Exchange operates in a highly competitive market in which market 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. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) was 7.6% in November 2019. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. 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 does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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)²⁶ of the Act and subparagraph (f)(2) of Rule 19b-4²⁷ 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 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)²⁸ 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-NYSEArca-2020-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2020-03. 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

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(2).

²⁸ 15 U.S.C. 78s(b)(2)(B).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-03, and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34-87976; File No. SR-CboeEDGX-2020-001]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Governing the Give Up of a Clearing Member by a User on Exchange Transactions

January 15, 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 EDGX Exchange, Inc. (the "Exchange" or "'EDGX'") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX Options") proposes to amend its rules governing the give up of a Clearing Member by a User on Exchange transactions. 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/options/regulation/rule_filings/edgx/), 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 Rule 21.12, which governs the give up of a Clearing Member⁵ by a User⁶ on Exchange transactions, to substantially conform to existing Cboe Exchange, Inc. ("Cboe Options") Rule 5.10, proposed Cboe C2 Exchange, Inc. ("C2 Options") Rule 6.30, and proposed Cboe BZX Exchange, Inc. ("BZX Options") Rule 21.12.⁷

Background

By way of background, Exchange Rule 21.12 provides that when a User executes a transaction on the Exchange, it must give up the name of the Clearing Member (the "Give Up") through which the transaction will be cleared. Rule

⁵ The term "Clearing Member" means an Options Member that is self-clearing or an Options Member that clears EDGX Options Transactions for other Members of EDGX Options. See Exchange Rule 16.1.

⁶ The term "User" means any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access). See Exchange Rule 16.1.

⁷ See SR-C2-2020-001 (filed January 2, 2020) and SR-CboeBZX-2020-002 (filed January 2, 2020).

21.12 also provides that a User may only give up a "Designated Give Up"⁸ or its "Guarantor."⁹ This limitation is enforced by the Exchange's trading systems.¹⁰

A "Designated Give Up" of a User refers to a Clearing Member identified to the Exchange by that User as a Clearing Member the User requests the ability to give up and that has been processed by the Exchange as a Designated Give Up.¹¹ To designate a "Designated Give Up" every User (other than a Market-Maker) must submit written notification, in a form and manner prescribed by the Exchange.¹² Specifically, the Exchange uses a standardized form ("Notification Form") that a User needs to complete and submit to the Exchange's Membership Services Department ("MSD").¹³ The Exchange notes that a User may currently designate any Clearing Member as a Designated Give Up.¹⁴ Additionally, there is no minimum or maximum number of Designated Give Ups that a User must identify. Paragraph (d) of Rule 21.12 also requires that the Exchange notify a Clearing Member, in writing and as soon as practicable, of each User that has identified it as a Designated Give Up. The Exchange however, will not accept any instructions from a Clearing Member to prohibit a User from designating the Clearing Member as a Designated Give Up. Additionally, there is no subjective evaluation of a User's list of proposed Designated Give Ups by the Exchange.

For purposes of Rule 21.12, a "Guarantor" of an executing User refers to a Clearing Member that has issued a Letter of Guarantee for the executing User under the Rules of the Exchange that are in effect at the time of the execution of the applicable trade.¹⁵ An executing User may give up its Guarantor without having to first designate it to the Exchange as a "Designated Give Up."¹⁶ Additionally, the Exchange notes that a Market-Maker is only enabled to give up the Guarantor of the Market-Maker pursuant to Exchange Rule 22.8 and also does not need to identify any Designated Give Ups.¹⁷

⁸ See Exchange Rule 21.12(b)(1).

⁹ See Exchange Rule 21.12(b)(2).

¹⁰ See Exchange Rule 21.12(c).

¹¹ *Supra* note 7.

¹² See Exchange Rule 21.12(b)(3).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Supra* note 8.

¹⁶ The Exchange already knows each User's Guarantor and as such, no further designation or identification is required of Users to enable their respective Guarantors. See Exchange Rule 21.12(b)(6).

¹⁷ See Exchange Rule 21.12(b)(5).

Beginning in early 2018, certain Clearing Members (in conjunction with the Securities Industry and Financial Markets Association ("SIFMA")) expressed concerns related to the process by which executing brokers on U.S. options exchanges (the "Exchanges") are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members have recently identified the current give up process as a significant source of risk for clearing firms. SIFMA-affiliated Clearing Members subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.¹⁸

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Member to "opt in", at the Options Clearing Corporation ("OCC") clearing number level, to a feature that, if enabled by the Clearing Member, will allow the Clearing Member to specify which Users are authorized to give up that OCC clearing number. As proposed, Rule 21.12 will continue to require that Users identify to the Exchange, via the Notification Form, all Clearing Members that the User would like to have the ability to give up (*i.e.*, Designated Give Ups).¹⁹ However, the Exchange proposes to modify the language of paragraph (a) to provide that a User may indicate, at the time of the trade or through post trade allocation, any OCC number of the

¹⁸ Cboe Options recently modified its give up procedure under rule 5.10 to allow clearing trading permit holders to "Opt In" such that the clearing trading permit holder ("TPH") may specify which Cboe Options TPH organizations are authorized to give up that clearing trading permit holder. See Securities and Exchange Act Release No. 86401 (July 17, 2019), 84 FR 35433 (July 23, 2019) (SR-CBOE-19-036) ("Cboe Options Rule 5.10 Amendment"). Nasdaq PHLX LLC ("PHLX"), NYSE Arca, Inc., ("NYSE Arca"), and NYSE American LLC ("NYSE American") also recently modified their respect give up rules to adopt an "Opt In" process. See also Securities and Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (SR-PHLX-2018-72), Securities and Exchange Act Release No. 85871 (May 16, 2019), 84 FR 23613 (May 22, 2019) (SR-NYSEArca 2019-32) and Securities and Exchange Act Release 85875 (May 16, 2019), 84 FR 23591 (May 22, 2019) (SR-NYSEAMER-2019-17). The Exchange's proposal leads to the same result of providing its Clearing Member's the ability to control risk and includes PHLX's, NYSE Arca's and NYSE American's "Opt In" process, but it otherwise differs slightly in process from their give up rules. For example, the Exchange intends to maintain its provisions relating to Designated Give Ups and eliminate its provisions relating to the rejection of a trade. The Exchange's proposal is substantially the same as the existing give up process on Cboe Options.

¹⁹ *Id.*

Clearing Member through which the transaction will be cleared.²⁰ The Exchange proposes to also add to Rule 21.12(a) that Clearing Members may elect to “Opt In,” as defined in paragraph (c) of the proposed Rule and described further below, and restrict one or more of its OCC number(s) (“Restricted OCC Number”).²¹ A User may Give Up a Restricted OCC Number provided the User has written authorization as described in paragraph (c)(2) (“Authorized User”).²² The Exchange notes that if a User identifies a particular Clearing Member as a Designated Give Up, but that Clearing Member has restricted its OCC number(s) and has not authorized the User to give it up, then the Exchange will not give effect to the designation on the Notification Form (*i.e.*, the User will not be able to give up that Clearing Member even though it was identified as a Designated Give Up). Similarly, if a Clearing Member authorizes a User to give up its Restricted OCC Number(s), the Exchange will not enable that Clearing Member as a give up for that User until and unless the User identifies that Clearing Member as a Designated Give Up on a Notification Form. In light of Clearing Members having the ability to restrict their OCC numbers from being given up by unauthorized Users, the Exchange also proposes to eliminate the process for Clearing Members to “reject” trades. As such, the Exchange proposes to eliminate subparagraphs (e) and (f) of Rule 21.12 and any other references to the process in Rule 21.12.²³

Proposed Rule 21.12(c) provides that Clearing Members may request the Exchange restrict one or more of their OCC clearing numbers (“Opt In”) from being given up unless otherwise authorized.²⁴ If a Clearing Member Opts In, the Exchange will require written authorization from the Clearing Member permitting a User to give up a Clearing Member’s Restricted OCC Number.²⁵ An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in proposed subparagraph

(3).²⁶ If a Clearing Member does not Opt In, that Clearing Member’s OCC number may be subject to being given up by any User that has designated it as a Designated Give Up.²⁷ Proposed Rule 21.12(c)(1) will set forth the process by which a Clearing Member may Opt In.²⁸ Specifically, a Clearing Member may Opt In by sending a completed “Clearing Member Restriction Form” listing all Restricted OCC Numbers and Authorized Users.²⁹ A copy of the proposed form is included in Exhibit 3. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC.³⁰ The Clearing Member would be required to submit the Clearing Member Restriction Form to the Exchange’s MSD as described on the form.³¹ Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System.³² This time period is to provide adequate time for the Users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Users to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such Users would still be able to give up that Restricted OCC Number during this ninety day period (*i.e.*, until the number becomes restricted within the System).

Proposed Rule 21.12(c)(2) will set forth the process for Users to give up a Clearing Member’s Restricted OCC Number.³³ Specifically, a User desiring to give up a Restricted OCC Number must become an Authorized User.³⁴ The Clearing Member will be required to authorize a User as described in subparagraph (1) or (3) of Rule 21.12(c) (*i.e.*, through a Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the User is a party to, as set forth in Rule 21.12(b)(6).³⁵ Pursuant to proposed Rule 21.12(c)(3), a Clearing Member may

amend the list of its Authorized Users or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange’s MSD indicating the amendment as described on the form.³⁶ Once a Restricted OCC Number is effective within the System pursuant to Rule 21.12(c)(1), the Exchange may permit the Clearing Member to authorize, or remove authorization for, a User to give up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances.³⁷ The Exchange will promptly notify Users if they are no longer authorized to give up a Clearing Member’s Restricted OCC Number.³⁸ If a Clearing Member removes a Restricted OCC Number, any User may give up that OCC clearing number once the removal has become effective on or before the next business day, provided that Clearing Member has been designated as a Designated Give Up.³⁹

The Exchange also proposes to amend current subparagraph (c) (System) (to be relettered to paragraph (d)) of Rule 21.12 to clarify that in addition to the Exchange’s system not accepting orders that identify a give up that is not at the time a Designated Give Up or a Guarantor, the System will also reject any order that designates a Restricted OCC Number for which the User is not an Authorized User.⁴⁰

The Exchange proposes to amend current paragraph (d) (Notice to Clearing Members) (to be relettered to paragraph (e)) of Rule 21.12 to provide that the Exchange will provide notice to Users that they are authorized or unauthorized by Clearing Members.⁴¹

The Exchange also proposes to amend current paragraph (g) (Other Give Up Changes) (to be relettered to subparagraph (f)) of Rule 21.12 to provide that a User may change the give up on the trade to another Designated Give Up, provided it’s an Authorized User for any Restricted OCC Number, or to its Grantor.⁴² Additionally, the Exchange seeks to define a specific “Trade Date Cutoff Time”⁴³ and “T+1

²⁶ *Id.*

²⁷ *Id.*

²⁸ See proposed Exchange Rule 21.12(c)(1); see also Cboe Options Rule 5.10(c)(1).

²⁹ This form will be available on the Exchange’s website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member’s contact information to assist Users (to the extent they are not already Authorized Users) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Members of such updates on a periodic basis.

³⁰ *Supra* note 29.

³¹ *Id.*

³² *Id.*

³³ See proposed Exchange Rule 21.12(c)(2); see also Cboe Option Rule 5.10(c)(2).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See proposed Exchange Rule 21.12(c)(3); see also Cboe Options Rule 5.10(c)(3).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See proposed Exchange Rule 21.12(d); see also Cboe Options Rule 5.10(d).

⁴¹ See proposed Exchange Rule 21.12(e); see also Cboe Options Rule 5.10(e).

⁴² See proposed Exchange Rule 21.12(f); see also Cboe Options Rule 5.10(f).

⁴³ The “Trade Date Cutoff Time” is established by the Clearing Corporation (or 15 minutes thereafter if the Exchange receives and is able to process a request to extend its time of final trade submission to the Clearing Corporation). See proposed

²⁰ The Exchange notes that Cboe Options plans to amend paragraph (a) of Rule 5.10 to conform to proposed paragraph (a) of EDGX Options Rule 21.12 and C2 Options Rule 6.30 with a slight modification as it relates to floor trading on Cboe Options.

²¹ See proposed Exchange Rule 21.12(a); see also Cboe Options Rule 21.12(a).

²² *Id.*

²³ The Exchange notes that Cboe Options similarly eliminated the process for which Clearing Trading Permit Holders may “reject” trades in Rule 5.10. See the Cboe Options Rule 5.10 Amendment.

²⁴ See proposed Exchange Rule 21.12(c); see also Cboe Options Rule 5.10(c).

²⁵ *Id.*

Cutoff Time” in the rule text of proposed paragraph (f).⁴⁴

The Exchange proposes to amend current paragraph (h) (Responsibility) (to be relettered to paragraph (g)) of Rule 21.12 to eliminate any applicable reference to current paragraph (e) or (f) of the Rule and to conform with Cboe Options Rule 5.10(g).

The Exchange also proposes to adopt subparagraph (h) of Rule 21.12 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 3.1, titled “Business Conduct of Members.”⁴⁵ This language will make clear that the Exchange will regulate an intentional misuse of this Rule, and that such behavior would be a violation of Exchange rules. The proposed language is similar to corresponding provisions in other exchanges’ give up rules.⁴⁶

Lastly, the Exchange proposes to amend its current Member Notification of Designated Give Ups Form (“Designated Give Ups Form”). As of October 7, 2019 the Exchange and each of its affiliated options exchanges (*i.e.*, C2 Options, BZX Options, and Cboe Options (collectively, “Cboe Markets”)) are on the same technology platform. To provide further harmonization across the Cboe Markets and provide more seamless administration of the Give up rule, the Exchange proposes to eliminate the current Designated Give Ups Form and adopt a new form which would be applicable to all Cboe Markets going forward. The proposed Designated Give Ups Form is included in Exhibit 3.

Implementation Date

The Exchange proposes to announce the implementation date of the proposed rule change in an Exchange Notice, to be published no later than thirty (30) days following the operative date. The implementation date will be no later than sixty (60) days following the operative date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

Exchange Rule 21.12(f)(1); *see also* Cboe Options Rule 5.10(f)(1).

⁴⁴ The “T+1 Cutoff Time” is 1:00 p.m. Eastern Time on T+1; *see* proposed Exchange Rule 21.12(f)(3); *see also* Cboe Options Rule 5.10(f)(3) (which provides a cutoff time of 12:00 p.m. Central Time).

⁴⁵ *See* Cboe Options Rule 5.10(h), which states that intentional misuse of Rule 5.10 may be treated as a violation of Rule 8.1 (Just and Equitable Principles of Trade).

⁴⁶ *See, e.g.*, Cboe Options Rule 5.10(h).

Section 6(b) of the Act.⁴⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁸ 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 facilitation 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 the Section 6(b)(5)⁴⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Users to identify any Clearing Member as a Designated Give Up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.*, a process that lacks authorization) as a significant source of risk for clearing firms. The Exchange believes that the proposed changes to Rule 21.12 help alleviate this risk by enabling Clearing Members to ‘Opt In’ to restrict one or more of its OCC clearing numbers (*i.e.*, Restricted OCC Numbers), and to specify which Authorized Users may give up those Restricted OCC Numbers. As described above, all other Users would be required to receive written authorization from the Clearing Member before they can give up that Clearing Member’s Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Users upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and

interests across the industry. For example, although the proposed rule would require Users (other than Authorized Users) to seek authorization from Clearing Members in order to have the ability to give them up, each User will still have the ability to give up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that User is party to that arrangement. The Exchange also notes that to the extent the executing User has a clearing arrangement with a Clearing Member (*i.e.*, through a Letter of Guarantee), a trade can be assigned to the executing User’s guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Member would be responsible for a trade, which protects investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated Members. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become Members on the Exchange to take advantage of the trading opportunities. Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange’s proposal is to reduce risk for Clearing Members under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange’s understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant’s transaction, even where there is no prior customer relationship or authorization for that designated transaction. In the absence of a mechanism that governs a market participant’s use of a Clearing Member’s services, the Exchange’s proposal may indirectly facilitate the ability of a Clearing Member to manage their existing customer relationships while continuing to allow market participant

⁴⁷ 15 U.S.C. 78f(b).

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁹ *Id.*

choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁵⁰ and Rule 19b-4(f)(6)⁵¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)⁵² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, the Exchange requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change from Phlx, after which other options exchanges subsequently adopted substantially similar rules.⁵³ The Commission

believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because the Exchange's proposal raises no new issues. Further, such waiver will permit the Exchange, without further delay, to begin implementing the new standardized give up process, thus aligning its give up process with that of the other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.⁵⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-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-CboeEDGX-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

change to establish rules governing give ups). See also *supra* note 18 (citing the filings in which other options exchanges adopted substantially similar rules).

⁵⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeEDGX-2020-001 and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-00914 Filed 1-21-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87982; File No. SR-NASDAQ-2020-001]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price Below \$0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 or More to One Over the Prior Two Year Period

January 15, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 2, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission

⁵⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁰ 15 U.S.C. 78s(b)(3)(A).

⁵¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵² 17 CFR 240.19b-4(f)(6)(iii).

⁵³ See Securities Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (Phlx-2018-72) (order approving a proposed rule

(“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the delisting process for securities with a bid price below \$0.10 and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.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 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

Nasdaq proposes to modify the delisting process for securities with a bid price below \$0.10 for ten consecutive trading days and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period (meaning that an investor would hold one share for every 250 shares or more owned at the start of the period).

Currently, Nasdaq rules require that primary equity securities, preferred stocks and secondary classes of common stock maintain a minimum \$1.00 bid price for continued listing.³ Under Listing Rule 5810(c)(3)(A), a security is considered deficient with this requirement if its bid price closes below

\$1.00 for a period of 30 consecutive business days. A company with a bid price deficiency has 180 calendar days from notification of the deficiency to regain compliance. A company generally can regain compliance with the bid price requirement by maintaining a \$1.00 closing bid price for a minimum of ten consecutive business days during the compliance period.⁴ Under Listing Rule 5810(c)(3)(A)(ii), a company that lists a security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, provided that on the last day of the first compliance period the company meets the market value of publicly held shares requirement for continued listing as well as all other applicable standards for initial listing on the Capital Market and notifies Nasdaq of its intent to cure the bid deficiency.

This process is designed to allow adequate time for a company facing temporary business issues, a temporary decrease in the market value of its securities, or temporary market conditions to come back into compliance with a bid price deficiency. Nasdaq has observed certain situations where, in Nasdaq’s view, a company may be facing more serious issues and a compliance period of up to 360 days⁵ therefore may not be appropriate. Specifically, these situations involve: (i) Securities with very low security prices (below \$0.10); and (ii) securities where the company has completed one or more reverse stock splits over the prior two year period that, when considered cumulatively, result in a ratio of 250 shares or more to one (meaning that an investor would receive one share for every 250 shares or more owned at the start of the period), and then fails to satisfy the bid price requirement.

In these situations, Nasdaq has observed that the challenges facing the company generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the bid price issues can be a leading indicator of other listing compliance concerns. As a result, these

companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies frequently need to raise additional capital to fund their business operations and often do so by engaging in extremely dilutive transactions. Accordingly, in order to enhance investor protection, Nasdaq proposes to modify the listing rules so that these companies are subject to shortened compliance periods, which could lead to earlier delisting, and enhanced review procedures.

With respect to securities with very low prices, Nasdaq proposes to modify the Listing Rules to provide that a company in a bid price compliance period (*i.e.*, the company’s security has already traded below \$1.00 for thirty consecutive days) will immediately receive a Staff Delisting Determination if the security trades below \$0.10 for a period of ten consecutive trading days, ending any otherwise applicable compliance period. Such a company could request review of the Delisting Determination by a Hearings Panel, and the Panel could grant the company additional time to complete a reverse stock split or otherwise regain compliance.⁶ Nasdaq believes that placing such companies immediately under the scrutiny of a Hearings Panel will serve to better protect investors.

Nasdaq also proposes to change the Listing Rules to require the issuance of a Staff Delisting Determination if a company falls out of compliance with the \$1.00 minimum bid price (*i.e.*, it has had a closing bid price below \$1.00 for 30 consecutive business days) after completing one or more reverse stock splits resulting in a cumulative ratio 250 shares or more to one over the two year period before such non-compliance.⁷ In these cases, Nasdaq believes it is inappropriate for a security to remain listed while relying on very large reverse stock splits to maintain compliance with the \$1.00 minimum bid price.

A company that is not eligible for a compliance period under these proposed rule changes would receive a Staff Delisting Determination, which it

⁶ Under Listing Rule 5815(c)(1)(A), a Hearings Panel can grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination.

⁷ For example, a company could effect a reverse stock split in a ratio of 25 shares to one followed within the two-year period by a second reverse stock split in a ratio of 10 shares to one, resulting in a cumulative ratio of 250 shares to one. Alternatively, a company could effect three reverse stock splits in the two year period, with ratios of 10 shares to one, five shares to one, and five shares to one, respectively, resulting in a cumulative ratio of 250 shares to one.

³ See Listing Rules 5450(a)(1), 5460(a)(3), 5550(a)(2) and 5555(a)(1).

⁴ Under Listing Rule 5810(c)(3)(G), Nasdaq Staff could extend this ten-day period to a maximum of 20 days.

⁵ As noted above, under Listing Rule 5810(c)(3)(A) all companies are eligible for an initial compliance period of 180 calendar days from the notification of non-compliance with the bid price requirement and a company that lists its security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, for a total compliance period of up to 360 calendar days.

could appeal to a Hearings Panel, and the Panel could grant the company an exception to remain listed if it believes the company will be able to achieve and maintain compliance with the bid price requirement. However, Nasdaq also proposes to modify the Listing Rules so that following such a Panel exception the company would be subject to the procedures applicable to a company with recurring deficiencies as described in Rule 5815(d)(4)(B). As a result, if within one year of the date the company regains compliance the company again fails to maintain compliance with the price requirement, the company would not be eligible for a compliance period and instead the Listing Qualifications Department will issue a Staff Delisting Determination, which can be appealed to the Hearings Panel.

Nasdaq believes that it would be unfair to modify the rules impacting companies with securities that are already in a compliance period, and therefore proposes to implement these new rules for companies that first receive notification of non-compliance with the bid price requirement after the date of the Commission's approval of these changes. A company that has already received notification of non-compliance would be permitted to regain compliance under the existing rule, in the manner that the notification of non-compliance would have described.⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) and 6(b)(7) of the Act,¹⁰ in particular. The proposed rule change furthers the objectives of Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing Nasdaq's listing requirements and limiting the time that a security can remain listed with a price below \$0.10 or following one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year

⁸ Nasdaq notes that under Listing Rule 5810(c)(3)(A)(ii), a company is not eligible for the second compliance period "if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency." As is currently the case, Nasdaq may rely upon this language to deny the second compliance period to a company with a very low stock price or that has engaged in significant prior reverse stock splits, even though the company is not yet subject to the new rule.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5) and (7).

period. In that regard, Nasdaq has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies often have a need to raise additional capital to fund their business operations at extremely low prices in dilutive transactions. While listed, these securities are exempt from the "Penny Stock Rules,"¹¹ which provide enhanced investor protections to prevent fraud and safeguard against potential market manipulation. In particular, the Penny Stock Rules generally require that broker-dealers provide a disclosure document to their customers describing the risk of investing in Penny Stocks and approve customer accounts for transactions in Penny Stocks. Nasdaq believes that an exemption from these Penny Stock requirements may not be appropriate for abnormally low priced stocks and stocks that are trading below \$1 after completing one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year period because these securities may have similar characteristics to Penny Stocks. Nasdaq therefore believes it is appropriate to subject these securities to heightened scrutiny given the availability of the exemption to securities listed on Nasdaq.

The proposed rule change furthers the objectives of Section 6(b)(7) of the Act in that it continues to provide a fair procedure for companies subject to these enhanced listing requirements. These companies can seek review of a Staff Delisting Determination from a Hearings Panel, which can afford the company additional time to regain compliance, and can appeal the Hearings Panel decision to the Nasdaq Listing and Hearing Review Council.¹² As a result, Nasdaq believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

Finally, Nasdaq believes that the ten consecutive trading day period that a company must trade below \$0.10 before the proposed rule would require

¹¹ See Exchange Act Rules 3a51-1, 17 CFR 240.3a51-1, and 15g-1 to 15g-100, 17 CFR 240.5g-1 *et seq.*

¹² See Listing Rules 5815 and 5820, respectively.

issuance of a Staff Delisting Determination appropriately balances Nasdaq's obligation and desire to protect investors under Section 6(b)(5) with the need for a fair and equitable procedure under Section 6(b)(7). The ten consecutive trading day period is long enough that a temporary decline below \$0.10 will not trigger the proposed heightened requirements. Moreover, the ten-day period is designed to parallel the timeframe, already a part of Nasdaq's rules, that a company must trade above \$1.00 to demonstrate compliance with the bid price requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While Nasdaq does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-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-NASDAQ-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-NASDAQ-2020-001, and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-00917 Filed 1-21-20; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION**Class Waiver of the Nonmanufacturer Rule**

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for commercially handheld land mobile radios under NAICS code 334220/PSC 5820.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for handheld land mobile radios under North American Industry Classification System (NAICS) code 334220 and Product Service Code (PSC) 5820. This U.S. industry comprises establishments primarily engaged in manufacturing handheld land mobile radios. According to the request, no small business manufacturers supply this product to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply handheld land mobile radios, regardless of the business size of the manufacturer, on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), historically underutilized business zones (HUBZone), or participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted by February 21, 2020.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Carol Hulme, Program Analyst, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Program Analyst, by telephone at 202-205-6347; or by email at Carol-Ann.Hulme@sba.gov.

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business

Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts (except those valued between \$3,500 and \$250,000) set aside for small business, SDVOSB, WOSB, EDWOSB, HUBZone, or BD program participants provide the product of a small business manufacturer or processor if the recipient of the set-aside is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

The SBA defines "class of products" based on a combination of (1) the six-digit North American Industry Classification System (NAICS) code, (2) the four-digit Product Service Code (PSC), and (3) a description of the class of products.

SBA invites the public to comment on this pending request to waive the NMR for handheld land mobile radios under NAICS code 334220 and PSC 5820. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

David Loines,

Director, Office of Government Contracting.

[FR Doc. 2020-00999 Filed 1-21-20; 8:45 am]

BILLING CODE 8025-01-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, Section 309 and the Small

¹³ 17 CFR 200.30-3(a)(12).

Business Administration Rules and Regulations, Section 107.1900 (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02-0579 issued to Cephas Capital Partners, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 9, 2020.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. 2020-00998 Filed 1-21-20; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 10874]

60-Day Notice of Proposed Information Collection: Exchange Programs Alumni Website Registration

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. 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 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *March 23, 2020*.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering "Docket Number: DOS-2019-0030" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* *KellyPW@state.gov*.

- *Regular Mail:* Bureau of Educational and Cultural Affairs; U.S. Department of State; SA-5, Room C2-C20; Washington, DC 20522-0503.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

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 Patrick Kelly, who may be reached on 202-632-6186 or at *KellyPW@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Exchange Programs Alumni Website Registration.

- *OMB Control Number:* 1405-0192.

- *Type of Request:* Revision of a Currently Approved Collection.

- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/P/A.

- *Form Number:* DS-7006.

- *Respondents:* Exchange program alumni and current participants of U.S. government-sponsored exchange programs.

- *Estimated Number of Respondents:* 4,000 for full form, and 21,000 for expedited form.

- *Estimated Number of Responses:* 25,000.

- *Average Time per Response:* 10 minutes for response to the full form or 2 minutes for response to the expedited form.

- *Total Estimated Burden Time:* 1,367 hours.

- *Frequency:* One time per respondent.

- *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 International Exchange Alumni website (*alumni.state.gov*) requires information to process users' voluntary request for participation in the International Exchange Alumni network. Other than contact and exchange program information, which is

required for website registration, all other information is provided on a voluntary basis. Participants also have the option of restricting access to their information.

Respondents to this registration form are U.S. government-sponsored exchange program participants and alumni. The Office of Alumni Affairs collects data from users not only to verify their status or participation in a program, but to help alumni network with one another and aid Embassy staff in their alumni outreach. Once a user account is activated, the same information may be used for contests, competitions, and other public diplomacy initiatives in support of Embassy and foreign policy goals.

Methodology

Information provided for registration is collected electronically via the Alumni website, *alumni.state.gov*.

Additional Information

International Exchange Alumni is a secure, encrypted website.

Aleisha Woodward,

Deputy Assistant Secretary for Policy.

[FR Doc. 2020-00971 Filed 1-21-20; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board (Board) has received a request from the Southern California Association of Governments (WB19-62—12/4/19) for permission to use select data from the Board's 2017-2018 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB19-62.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245-0319.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020-00973 Filed 1-21-20; 8:45 am]

BILLING CODE 4915-01-P

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

**Notice of Modification of Section 301
Action: China's Acts, Policies, and
Practices Related to Technology
Transfer, Intellectual Property, and
Innovation**

AGENCY: Office of the United States
Trade Representative.

ACTION: Notice of modification of action.

SUMMARY: In accordance with the
direction of the President, the U.S.
Trade Representative has determined to
modify the action being taken in this
Section 301 investigation by reducing
the rate of additional duty on certain
products of China from 15 percent to 7.5
percent.

DATES: Applicable as of 12:01 a.m.
Eastern Standard Time on February 14,
2020, the rate of additional duty will be
7.5 percent for products covered by
Annex A of the August 20, 2019 notice
(84 FR 43304).

FOR FURTHER INFORMATION CONTACT: For
questions about this notice, contact
Assistant General Counsels Philip
Butler or Susie Park, or Director of
Industrial Goods Justin Hoffmann at
(202) 395-5725. For questions on
customs classification or
implementation of additional duties,
contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

*A. Prior Determinations in the
Investigation*

For background on the proceedings in
this investigation, please see the prior
notices issued in this investigation,
including 82 FR 40213 (August 24,
2017), 83 FR 14906 (April 6, 2018), 83
FR 28710 (June 20, 2018), 83 FR 33608
(July 17, 2018), 83 FR 38760 (August 7,
2018), and 83 FR 40823 (August 16,
2018), 83 FR 47974 (September 21,
2018), 83 FR 49153 (September 28,
2018), 84 FR 20459 (May 9, 2019), 84 FR
43304 (August 20, 2019), 84 FR 45821
(August 30, 2019), and 84 FR 69447
(December 18, 2019).

On August 20, 2019, the U.S. Trade
Representative, at the direction of the
President, determined to modify the
action being taken in the investigation
by imposing an additional 10 percent *ad
valorem* duty on products of China with
an annual aggregate trade value of
approximately \$300 billion. See 84 FR
43304 (August 20, 2019) (the August 20
notice). The tariff subheadings subject to
the 10 percent additional duties were
separated into two lists with different
effective dates. The list in Annex A had
an effective date of September 1, 2019.

The list in Annex C had an effective
date of December 15, 2019.

Subsequently, at the direction of the
President, the U.S. Trade Representative
determined to increase the rate of the
additional duty applicable to the tariff
subheadings covered by the action
announced in the August 20 notice from
10 percent to 15 percent. See 84 FR
45821 (August 30, 2019).

On December 18, 2019, at the
direction of the President, the U.S.
Trade Representative determined to
suspend indefinitely the imposition of
the additional 15 percent *ad valorem*
duty on products covered by Annex C
of the August 20 notice. See 84 FR
69447 (December 18, 2019).

B. Determination To Modify Action

The Section 301 statute, which is set
out in Sections 301 to 308 of the Trade
Act of 1974 (19 U.S.C. 2411-2418),
includes authority for the U.S. Trade
Representative to modify the action
being taken in an investigation. In
particular, Section 307(a)(1) authorizes
the U.S. Trade Representative to modify
or terminate any action taken under
Section 301, subject to the specific
direction, if any, of the President, if the
burden or restriction on United States
commerce of the acts, policies, and
practices that are the subject of the
action has increased or decreased, or the
action being taken under Section 301(b)
and no longer is appropriate.

The United States is engaging with
China with the goal of obtaining the
elimination of the acts, policies, and
practices covered in the investigation.
On December 13, 2019, following
months of negotiations, the United
States and China reached an agreement
on a phase one trade deal that requires
structural reforms and other changes to
China's economic and trade regime,
including with respect to certain issues
covered in this Section 301
investigation. The United States and
China signed the phase one agreement
on January 15, 2020, and the agreement
is scheduled to enter into force 30 days
thereafter on February 14, 2020.

In light of the scheduled entry into
force of the phase one agreement, and at
the direction of the President, the U.S.
Trade Representative has determined
that the action announced on August 20,
2019, as modified by the August 30
notice, no longer is appropriate.
Specifically, and in accordance with the
President's direction, the U.S. Trade
Representative has determined to
reduce the level of additional duties
from 15 percent to 7.5 percent on
products of China covered by Annex A
of the August 20 notice, effective
February 14, 2020.

The U.S. Trade Representative's
decision to modify the action being
taken in this investigation takes into
account the extensive comments and
testimony previously provided in
connection with the August 20
modification.

The Annex to this notice amends the
Harmonized Tariff Schedule of the
United States (HTSUS) to provide that
the additional duties for the products
covered in Annex A of the August 20
notice will be reduced to 7.5 percent.

The U.S. Trade Representative will
continue to consider the actions being
taken in this investigation. In the event
that further modifications are
appropriate, the U.S. Trade
Representative intends to take into
account the extensive comments and
testimony previously provided.

Annex

Effective with respect to goods
entered for consumption, or withdrawn
from warehouse for consumption, on or
after 12:01 a.m. Eastern Standard Time
on February 14, 2020, subchapter III of
chapter 99 of the Harmonized Tariff
Schedule of the United States is
modified:

1. By amending U.S. Note 20(r), as
established by the U.S. Trade
Representative in a determination
contained in 84 FR 43304 (August 20,
2019), and as modified by 84 FR 45821
(August 30, 2019), by deleting "15
percent" each place that it appears, and
inserting "7.5 percent" in lieu thereof;
and

2. By amending the Rates of Duty 1-
General column of heading 9903.88.15,
as established by the U.S. Trade
Representative in a determination
contained in 84 FR 43304 (August 20,
2019), and as modified by 84 FR 45821
(August 30, 2019), by deleting "15%",
and inserting "7.5%" in lieu thereof.

Joseph Barloon,

*General Counsel, Office of the U.S. Trade
Representative.*

[FR Doc. 2020-00904 Filed 1-21-20; 8:45 am]

BILLING CODE 3290-F0-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

**Notice of Permanent Closure of Grove
Hill Municipal Airport (3A0), Grove Hill,
Alabama**

AGENCY: Federal Aviation
Administration, DOT.

ACTION: Notice of permanent closure of
Grove Hill Municipal Airport (3A0) and

removal from the National Plan of Integrated Airport Systems (NPIAS).

SUMMARY: The Federal Aviation Administration (FAA) received written notice, dated November 26, 2019, from the Town of Grove Hill Alabama requesting the permanent closure of Grove Hill Municipal Airport (3A0) and the removal of the airport from the NPIAS. The FAA hereby publishes the intent of the Town of Grove Hill's notice of permanent closure of Grove Hill Municipal Airport in accordance with U.S.C. 46319(b).

DATES: The permanent closure of the airport is effective as of December 28, 2019.

FOR FURTHER INFORMATION CONTACT: Graham Coffelt, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307, (601) 664-9886. The closure request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: Grove Hill Municipal Airport is a single runway, general aviation airport located in Southwest Alabama and is an unobligated and unclassified NPIAS airport. On November 26, 2019, The Town of Grove Hill, Alabama, sponsor of Grove Hill Municipal Airport (3A0), informed the FAA of its intent to finalize the closure. Section 46319 of Title 49 of the United States Code [49 U.S.C. 46319] provides that a public agency (as defined in 49 U.S.C. 47102) may not permanently close an airport listed in the national plan of integrated airport systems under 49 U.S.C. 47103 without providing written notice to the Administrator of the FAA at least 30 days before the date of the closure. The FAA recognizes the letter received November 26, 2019 from the Town of Grove Hill meets that requirement. The FAA is publishing the Town of Grove Hill's notice of permanent closure of Grove Hill Municipal Airport in accordance with 49 U.S.C. 46319(b). Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jackson, Mississippi on December 10, 2019.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2020-00934 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2020-0059]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. A final rule published on January 16, 2007 codified previous practices that permitted certificated air carriers to operate two-engine airplanes over long range routes. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

DATES: Written comments should be submitted by March 23, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS-270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412-239-3063.

FOR FURTHER INFORMATION CONTACT: Timothy McClain by email at: Timothy.McClain@faa.gov; phone: 202-267-4112.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120-0718.

Title: Extended Operations (ETOPS) of Multi-Engine Airplanes.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The final rule codified the previous practices that permitted certificated air carriers to operate two-engine airplanes over these long-range routes and extended the procedures for extended operations to all passenger-carrying operations on routes beyond 180 minutes from an alternate airport. This option is voluntary for operators and manufacturers. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

Respondents: Approximately 20 Operators and 4 Manufacturers and 7 future operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Burden per Operator varies per operation.

Estimated Total Annual Burden: 36,536 Hours.

Issued in Washington, DC, on January 16, 2020.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS-270.

[FR Doc. 2020-01002 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2007-28340]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that on October 24, 2019, Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) to renew a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.205, *Class I brake test—initial terminal inspection*, and part 215, Railroad Freight Car Safety Standards. FRA assigned the petition Docket Number FRA-2007-28340.

By letter dated April 24, 2015, UP received conditional relief from these Federal railroad safety regulations for freight cars received in interchange at the U.S./Mexico border crossing in Brownsville, Texas, to permit required inspections to be conducted in Olmito,

Texas, 5.65 miles north of West Rail International Bridge, located west of Brownsville, Texas. The original justification for the relief, as stated by UP, was to reduce train delays and congestion within the city of Brownsville, Texas. By letter dated February 7, 2018, UP received a modified waiver to incorporate unified conditions with its recently renewed waivers for its Mexican interchanges at Laredo and Eagle Pass, Texas, and Nogales, Arizona.

In support of its present petition to extend its relief, UP states it has been operating under the requirements set forth in this waiver since the grant date and have found no adverse effect on operational safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 21, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the

name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2020-00976 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2019-0107]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that on December 11, 2019, BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232. FRA assigned the petition Docket Number FRA-2019-0107.

BNSF requests that FRA grant a waiver of compliance from 49 CFR 232.215, *Transfer train brake tests*, with respect to transfer movements between BNSF's Old South Yard and New South Yard in Houston, Texas ("transfer movements"). Specifically, BNSF proposes to conduct a Class III brake test in lieu of a transfer train brake test prior to making a transfer movement governed by this waiver. BNSF believes that the limited waiver it seeks in this context is appropriate because the risk of proceeding with the transfer movements without a full transfer train brake test is minimal and is adequately addressed by the conditions BNSF proposes.

Transfer movements between BNSF's Old South Yard and New South Yard require a train to traverse approximately 1,400 feet of main line track on the Houston West Belt Subdivision ("Main Line"). The Main Line between the yards is tangent with no obstructions to visibility in either direction and is on a

level grade. Track speed on the Main Line at this location is 20 miles per hour (MPH), but trains performing transfer movements between BNSF yards operate at 10 MPH and would continue to do so under this waiver.

BNSF previously petitioned FRA for a waiver on this topic (see Docket Number FRA-2004-19949). FRA denied that petition without prejudice principally due to the absence of any conditions or alternate procedures included within the petition to ensure an adequate level of safety. BNSF believes the conditions set forth below will adequately address FRA's concerns.

BNSF requests that the waiver be granted to permit transfer movements to be governed subject to the following conditions:

1. Prior to undertaking a transfer movement, the brake pipe will be connected through the entire cut of cars to be moved.
2. Prior to undertaking a transfer movement, a successful Class III brake test must be performed on the train performing the transfer movement, with air pressure at the rear of the consist verified using an air gauge.
3. All trains performing a transfer movement between Old South Yard and New South Yard will be limited to a maximum speed of 10 MPH.

BNSF states these conditions represent a revised approach incorporating FRA's guidance from its denial of the 2005 petition.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE, W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 9, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020-00975 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2020-0001]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that on December 31, 2019, Canadian Pacific Railway (CP) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. FRA assigned the petition Docket Number FRA-2020-0001.

Specifically, CP proposes to implement a virtual simulation as a

third alternative to satisfy the “hands-on” portion of periodic refresher training required by 49 CFR 232.203(b)(8). Refresher training is required at intervals not to exceed 3 years, and shall consist of classroom and hands-on training, as well as testing. CP states that the simulation will improve consistency and quality of training.

The simulation is based on performance of a Class I freight air brake test and is designed to place the user in a virtual realistic scenario. The user is required to perform a variety of inspection tasks including, but not limited to, identifying closed cut-out cocks, uncoupled air hoses, closed angle cocks, improperly positioned retainer valves, and using a two-way end of train telemetry device. Users are required to successfully complete all tasks in the scenario. CP proposes to limit the class size to 12 students and seeks to apply this waiver systemwide to all CP operating personnel (e.g., trainmen, enginemen, and field supervisors responsible for performing freight air brakes tests.)

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation’s (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal Holidays.

Communications received by March 9, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020-00977 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0102]

RIN 2127-ZRIN

Advanced Driver Assistance Systems Draft Research Test Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comment (RFC); extension of comment period.

SUMMARY: In response to multiple requests, NHTSA is extending the comment period on the Advanced Driver Assistance Systems (ADAS) Draft Research Test Procedures RFC to March 6, 2020. The RFC was published in the **Federal Register** on November 21, 2019. The comment period was originally scheduled to end on January 21, 2020.

DATES: The comment period for the request for comment published November 21, 2019, at 84 FR 64405, is extended. Written comments must be received on or before March 6, 2020 in order to be considered timely.

ADDRESSES:

Documents: The draft research test procedures described in this RFC are available for viewing in PDF format in Docket No. NHTSA-2019-0102.

Comments: You may submit comments, identified by Docket No. NHTSA-2019-0102, by any of the following methods:

- **Internet:** To submit comments electronically, go to the U.S. Government regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** Written comments may be faxed to 202-493-2251.
- **Mail:** Send comments to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery:** If you submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- You may call Docket Management at 1-800-647-5527.

Instructions: For detailed instructions on submitting comments and additional information, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through <https://www.transportation.gov/privacy>. To facilitate tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. All timely comments will be fully considered, regardless of whether commenters directly identify themselves. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

FOR FURTHER INFORMATION CONTACT: For research issues: Mr. Garrick Forckenbrock, Research Engineer, Vehicle Research and Test Center, National Highway Traffic Safety Administration, 10820 SR 347, Bldg. 60, East Liberty, OH 43319. Telephone:

937-666-4511. Email: garrick.forckenbrock@dot.gov. For legal issues: Ms. Sara Bennett, Attorney-Advisor, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202-366-2992. Email: sara.bennett@dot.gov.

SUPPLEMENTARY INFORMATION: On November 21, 2019, NHTSA published a request for comment (RFC) (84 FR 64405) on draft research test procedures that assess nine different ADAS technologies. This RFC includes test procedures that have been developed for research purposes only. For light vehicles, the research test procedures include: Active Parking Assist (APA);¹ Blind Spot Detection (BSD);² Blind Spot Intervention (BSI);³ Intersection Safety Assist (ISA);⁴ Opposing Traffic Safety Assist (OTSA);⁵ Pedestrian Automatic Emergency Braking (PAEB);⁶ Rear Automatic Braking;⁷ and Traffic Jam Assist (TJA).⁸ For heavy vehicles, the research test procedures include: Forward Collision Warning (FCW)⁹ and Automatic Emergency Braking (AEB).⁹ On December 10, 2019, NHTSA received a request for a 45-day extension extension of the comment period from the Association of Global

¹ National Highway Traffic Safety Administration (2019, August). *Active park assist system confirmation test* (DOT HS 812 714). Washington, DC: National Highway Traffic Safety Administration.

² National Highway Traffic Safety Administration (2018, June). *Blind spot detection system confirmation test (working draft)*. Washington, DC: National Highway Traffic Safety Administration.

³ National Highway Traffic Safety Administration (2019, July). *Blind spot intervention system confirmation test (working draft)*. Washington, DC: National Highway Traffic Safety Administration.

⁴ National Highway Traffic Safety Administration (2019, September). *Intersection safety assist system confirmation test (working draft)*. Washington, DC: National Highway Traffic Safety Administration.

⁵ National Highway Traffic Safety Administration (2019, September). *Opposing traffic safety assist system confirmation test (working draft)*. Washington, DC: National Highway Traffic Safety Administration.

⁶ National Highway Traffic Safety Administration (2019, April). *Pedestrian automatic emergency brake system confirmation test (working draft)*. Washington, DC: National Highway Traffic Safety Administration.

⁷ National Highway Traffic Safety Administration (2015, December). *Rear automatic braking feature confirmation test procedure*. Washington, DC: National Highway Traffic Safety Administration. www.regulations.gov, Docket No. NHTSA-2015-0119-0030.

⁸ National Highway Traffic Safety Administration (2019, June). *Traffic jam assist system confirmation test (working draft)*. Washington, DC: National Highway Traffic Safety Administration.

⁹ National Highway Traffic Safety Administration (2019, March). *Test track procedures for heavy vehicle forward collision warning and automatic emergency braking systems*. Washington, DC: National Highway Traffic Safety Administration.

Automakers, Inc. and the Alliance of Automobile Manufacturers. This request can be found in the docket for the RFC listed above under **ADDRESSES**. NHTSA has considered this request and determined that a 45-day extension beyond the original due date is acceptable to provide additional time for the public to comment on the RFC. This is to notify the public that NHTSA is extending the comment period on the RFC, and allowing it to run until March 6, 2020.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.4.

James Clayton Owens,
Acting Administrator.

[FR Doc. 2020-00938 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Funding Opportunity for the Department of Transportation's Nationally Significant Freight and Highway Projects (INFRA Grants) for Fiscal Year 2020; Infrastructure for Rebuilding America (INFRA) Program FY 2020 Notice of Funding Opportunity

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation (USDOT).

ACTION: Notice of funding opportunity.

SUMMARY: The Nationally Significant Freight and Highway Projects (NSFHP) program provides Federal financial assistance to highway and freight projects of national or regional significance. In 2017, the Department renamed this program the Infrastructure For Rebuilding America program (INFRA). This notice solicits applications for awards under the program's fiscal year (FY) 2020 funding, subject to the availability of appropriated funds.

DATES: Applications must be submitted by 11:59 p.m. EST on February 25, 2020. The *Grants.gov* "Apply" function will open by January 15, 2020.

ADDRESSES: Applications must be submitted through www.Grants.gov. Only applicants who comply with all submission requirements described in this notice and submit applications through www.Grants.gov will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the Office of the Secretary via email at INFRAgrants@dot.gov, or call Paul Baumer at (202) 366-1092. A TDD is available for individuals who are deaf or hard of

hearing at 202–366–3993. In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on USDOT’s website at <https://www.transportation.gov/buildamerica/INFRAgrants>.

SUPPLEMENTARY INFORMATION: The organization of this notice is based on an outline set in 2 CFR part 200 to ensure consistency across Federal financial assistance programs. However, that format is designed for locating specific information, not for linear reading. For readers seeking to familiarize themselves with the INFRA program, the Department encourages them to begin with Section A (Program Description), which describes the Department’s goals for the INFRA program and purpose in making awards, and Section E (Application Review Information), which describes how the Department will select among eligible applications. Those two sections will provide appropriate context for the remainder of the notice: Section B (Federal Award Information) describes information about the size and nature of awards; Section C (Eligibility Information) describes eligibility requirements for applicants and projects; Section D (Application and Submission Information) describes in detail how to apply for an award; Section F (Federal Award Administration Information) describes administrative requirements that will accompany awards; and Sections G (Federal Awarding Agency Contacts) and H (Other Information) provide additional administrative information.

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A. Program Description

1. Overview

The INFRA program provides Federal financial assistance to highway and freight projects of national or regional significance. To maximize the value of FY 2020 INFRA funds for all Americans, the Department is focusing the competition on transportation infrastructure projects that support four key objectives, each of which is discussed in greater detail in section A.2:

- (1) Supporting economic vitality at the national and regional level;
- (2) Leveraging Federal funding to attract non-Federal sources of infrastructure investment;
- (3) Deploying innovative technology, encouraging innovative approaches to project delivery, and incentivizing the use of innovative financing; and
- (4) Holding grant recipients accountable for their performance.

This notice’s focus on the four key objectives does not supplant the Department’s focus on safety as our top priority. The Department is committed to reducing fatalities and serious injuries on the surface transportation system. To reinforce the Department’s safety priority, the USDOT will require projects that receive INFRA awards to consider and effectively respond to data-driven transportation safety concerns. Section F.2.a describes related requirements that the Department will impose on each INFRA project. These requirements focus on performing detailed, data-driven safety analyses and incorporating project elements that respond to State-specific safety priority areas.

2. Key Program Objectives

This section of the notice describes the four key program objectives that the Department intends to advance with FY 2020 INFRA funds. These four objectives are reflected in later portions of the notice, including section E.1, which describes how the Department will evaluate applications to advance these objectives, and section D.2.b, which describes how applicants should address the four objectives in their applications.

a. Key Program Objective #1: Supporting Economic Vitality

A strong transportation network is critical to the functioning and growth of the American economy. The nation’s

industry depends on the transportation network to move the goods that it produces, and facilitate the movements of the workers who are responsible for that production. When the nation’s highways, railways, and ports function well, that infrastructure connects people to jobs, increases the efficiency of delivering goods and thereby cuts the costs of doing business, reduces the burden of commuting, and improves overall well-being.

Rural transportation networks play a vital role in supporting our national economic vitality. Addressing the deteriorating conditions and elevated fatality rates on our rural transportation infrastructure is of critical interest to the Department, as rural transportation networks face unique challenges in safety, infrastructure condition, and passenger and freight usage. Consistent with the Rural Opportunities to Use Transportation for Economic Success (ROUTES) Initiative, the Department will consider how the project will address the challenges faced by rural areas.

b. Key Program Objective #2: Leveraging of Federal Funding

The Department is committed to supporting the President’s call for more infrastructure investment. That goal will not be achieved through Federal investment alone, but rather requires States, local governments, and the private sector to maximize their own contributions.

By emphasizing leveraging of Federal funding, the Department expects to expand the total resources being used to build and restore infrastructure, rather than have Federal dollars merely displace or substitute for State, local, and private funds.

c. Key Program Objective #3: Innovation

The Department seeks to use the INFRA program to encourage innovation in three areas: (1) The deployment of innovative technology and expanded access to broadband; (2) use of innovative permitting, contracting, and other project delivery practices; and (3) innovative financing. This objective supports the Department’s strategic goal of innovation, with the potential for significantly enhancing the safety, efficiency, and performance of the transportation network. The USDOT anticipates INFRA projects will support the integration of new technology and facilitate increased public and private sector collaboration. In section E.1.a (Criterion #3), the Department provides many examples of innovative technologies, practices, and financing. It encourages applicants to identify those

that are suitable for their projects and local constraints.

d. Key Program Objective #4:
Performance and Accountability

The Department seeks to increase project sponsor accountability and performance by evaluating each INFRA applicant's plans to address the full lifecycle costs of their project and willingness to condition award funding on achieving specific Departmental goals.

To maximize public benefits from INFRA funds and promote local activity that will provide benefits beyond the INFRA-funded projects, the Department seeks projects that allow it to condition funding on specific, measurable outcomes. For appropriate projects, the Department may use one or more of the following types of events to trigger availability of some or all INFRA funds: (1) Reaching construction and project completion in a timely manner; or (2) achieving transportation performance objectives that support economic vitality or improve safety.

The Department does not intend to impose these conditions on unwilling or uninterested INFRA recipients, nor does it intend to limit the types of projects that should consider accountability mechanisms. Instead, in section E.1.d (Criterion #4), the Department provides a framework for accountability measures and encourages applicants to voluntarily identify those that are most appropriate for their projects and local constraints.

3. *Changes From the FY 2019 NOFO*

The FY 2020 INFRA Notice provides additional information explaining how the Department will evaluate whether applications meet the statutory Large Project Requirements described in Section C.3.d. Additionally, the Department has added, as a factor in the economic vitality evaluation (Sections A.2.a., D.2.b.v., and E.1.a), whether a project primarily serves freight and goods movement. Finally, consistent with the ROUTES Initiative, the Department will consider how projects address challenges in rural areas.

Applicants who are planning to re-apply using materials prepared for prior competitions should ensure that their FY 2020 application fully addresses the criteria and considerations described in this Notice and that all relevant information is up to date.

B. Federal Award Information

1. *Amount Available*

The FAST Act authorizes the INFRA program at \$4.5 billion for fiscal years

(FY) 2016 through 2020, including \$1 billion¹ for FY 2020, to be awarded by USDOT on a competitive basis to projects of national or regional significance that meet statutory requirements. This notice solicits applications for the \$906 million in FY 2020 INFRA funds available for awards. In addition to the FY 2020 INFRA funds, amounts from prior year authorizations, presently estimated at up to \$150 million, may be made available and awarded under this solicitation. Any award under this notice will be subject to the availability of appropriated funds.

2. *Restrictions on Award Portfolio*

The Department will make awards under the INFRA program to both large and small projects (refer to section C.3.ii. for a definition of large and small projects). For a large project, the FAST Act specifies that an INFRA grant must be at least \$25 million. For a small project, including both construction awards and project development awards, the grant must be at least \$5 million. For each fiscal year of INFRA funds, 10 percent of available funds are reserved for small projects, and 90 percent of funds are reserved for large projects.

The FAST Act specifies that not more than \$500 million in aggregate of the \$4.5 billion authorized for INFRA grants over fiscal years 2016 to 2020 may be used for grants to freight rail, water (including ports), or other freight intermodal projects that make significant improvements to freight movement on the National Highway Freight Network. After accounting for FY 2016–2019 INFRA selections, as much as \$158 million may be available within this constraint. Only the non-highway portion(s) of multimodal projects count toward this limit. Grade crossing and grade separation projects do not count toward the limit for freight rail, port, and intermodal projects. The Department's awards may not exhaust this limitation.

The FAST Act directs that at least 25 percent of the funds provided for INFRA grants must be used for projects located in rural areas, as defined in Section C.3.e. The Department may elect to go above that threshold. The USDOT must consider geographic diversity among

¹ Funds are subject to the overall Federal-aid highway obligation limitation, and funds in excess of the obligation limitation provided to the program are distributed to the States. While \$1 billion is authorized for FY 2020, \$906 million is available for award. For additional information see FAST Act § 1102 (f) and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016, Public Law 114–113, div. L § 120.

grant recipients, including the need for a balance in addressing the needs of urban and rural areas.

C. Eligibility Information

To be selected for an INFRA grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project that meets the Minimum Project Size Requirement.

1. *Eligible Applicants*

Eligible applicants for INFRA grants are: (1) A State or group of States; (2) a metropolitan planning organization that serves an Urbanized Area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals; (3) a unit of local government or group of local governments; (4) a political subdivision of a State or local government; (5) a special purpose district or public authority with a transportation function, including a port authority; (6) a Federal land management agency that applies jointly with a State or group of States; (7) a tribal government or a consortium of tribal governments; or (8) a multi-State or multijurisdictional group of public entities.

Multiple States or jurisdictions that submit a joint application should identify a lead applicant as the primary point of contact. Joint applications should include a description of the roles and responsibilities of each applicant and should be signed by each applicant. The applicant that will be responsible for financial administration of the project must be an eligible applicant.

2. *Cost Sharing or Matching*

This section describes the statutory cost share requirements for an INFRA award. Cost share will also be evaluated according to the "Leveraging of Federal Funding" evaluation criterion described in Section E.1.a (Criterion #2). That section clarifies that the Department seeks applications for projects that exceed the minimum non-Federal cost share requirement described here.

INFRA grants may be used for up to 60 percent of future eligible project costs. Other Federal assistance may satisfy the non-Federal share requirement for an INFRA grant, but total Federal assistance for a project receiving an INFRA grant may not exceed 80 percent of future eligible project costs. Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue-funded programs, private funds or other funding sources of non-Federal origins. If a Federal land management agency applies jointly with a State or

group of States, and that agency carries out the project, then Federal funds that were not made available under titles 23 or 49 of the United States Code may be used for the non-Federal share. Unless otherwise authorized by statute, local cost-share may not be counted as non-Federal share for both the INFRA and another Federal program. For any project, the Department cannot consider previously incurred costs or previously expended or encumbered funds towards the matching requirement. Matching funds are subject to the same Federal requirements described in Section F.2.b as awarded funds.

For the purpose of evaluating eligibility under the statutory limit on total Federal assistance, funds from the Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation & Improvement Financing (RRIF) credit assistance programs are considered Federal assistance and, combined with other Federal assistance, may not exceed 80 percent of the future eligible project costs.

3. Other

a. Eligible Projects

Eligible projects for INFRA grants are: Highway freight projects carried out on the National Highway Freight Network (23 U.S.C. 167); highway or bridge projects carried out on the National Highway System (NHS), including projects that add capacity on the Interstate System to improve mobility or projects in a national scenic area; railway-highway grade crossing or grade separation projects; or a freight project that is (1) an intermodal or rail project, or (2) within the boundaries of a public or private freight rail, water (including ports), or intermodal facility. A project within the boundaries of a freight rail, water (including ports), or intermodal facility must be a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility and must significantly improve freight movement on the National Highway Freight Network. Improving freight movement on the National Highway Freight Network may include shifting freight transportation to other modes, thereby reducing congestion and bottlenecks on the National Highway Freight Network. For a freight project within the boundaries of a freight rail, water (including ports), or intermodal facility, Federal funds can only support project elements that provide public benefits.

b. Eligible Project Costs

INFRA grants may be used for the construction, reconstruction, rehabilitation, acquisition of property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, equipment acquisition, and operational improvements directly related to system performance. Statutorily, INFRA grants may also fund development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering, design, and other preconstruction activities, provided the project meets statutory requirements. However, the Department is seeking to use INFRA funding on projects that result in construction. Public-private partnership assessments for projects in the development phase are also eligible costs.

INFRA grant recipients may use INFRA funds to pay the subsidy and administrative costs necessary to receive TIFIA credit assistance.

c. Minimum Project Size Requirement

For the purposes of determining whether a project meets the minimum project size requirement, the Department will count all future eligible project costs under the award and some related costs incurred before selection for an INFRA grant. Previously incurred costs will be counted toward the minimum project size requirement only if they were eligible project costs under Section C.3.b. and were expended as part of the project for which the applicant seeks funds. Although those previously incurred costs may be used for meeting the minimum project size thresholds described in this Section, they cannot be reimbursed with INFRA grant funds, nor will they count toward the project's required non-Federal share.

i. Large Projects

The minimum project size for large projects is the lesser of \$100 million; 30 percent of a State's FY 2018 Federal-aid apportionment if the project is located in one State; or 50 percent of the larger participating State's FY 2018 apportionment for projects located in more than one State. The following chart identifies the minimum total project cost for projects for FY 2018 for both single and multi-State projects.

| State | FY20 NSFHP (30% of FY19 apportionment) one-state minimum (millions) | FY20 NSFHP (50% of FY19 apportionment) multi-state minimum* (millions) |
|---------------|---|--|
| Alabama | \$100 | \$100 |
| Alaska | 100 | 100 |

| State | FY20 NSFHP (30% of FY19 apportionment) one-state minimum (millions) | FY20 NSFHP (50% of FY19 apportionment) multi-state minimum* (millions) |
|----------------------|---|--|
| Arizona | 100 | 100 |
| Arkansas | 100 | 100 |
| California | 100 | 100 |
| Colorado | 100 | 100 |
| Connecticut | 100 | 100 |
| Delaware | 54 | 91 |
| Dist. of Col | 51 | 86 |
| Florida | 100 | 100 |
| Georgia | 100 | 100 |
| Hawaii | 54 | 91 |
| Idaho | 92 | 100 |
| Illinois | 100 | 100 |
| Indiana | 100 | 100 |
| Iowa | 100 | 100 |
| Kansas | 100 | 100 |
| Kentucky | 100 | 100 |
| Louisiana | 100 | 100 |
| Maine | 59 | 99 |
| Maryland | 100 | 100 |
| Massachusetts | 100 | 100 |
| Michigan | 100 | 100 |
| Minnesota | 100 | 100 |
| Mississippi | 100 | 100 |
| Missouri | 100 | 100 |
| Montana | 100 | 100 |
| Nebraska | 93 | 100 |
| Nevada | 100 | 100 |
| New Hampshire | 53 | 89 |
| New Jersey | 100 | 100 |
| New Mexico | 100 | 100 |
| New York | 100 | 100 |
| North Carolina | 100 | 100 |
| North Dakota | 80 | 100 |
| Ohio | 100 | 100 |
| Oklahoma | 100 | 100 |
| Oregon | 100 | 100 |
| Pennsylvania | 100 | 100 |
| Rhode Island | 70 | 100 |
| South Carolina | 100 | 100 |
| South Dakota | 91 | 100 |
| Tennessee | 100 | 100 |
| Texas | 100 | 100 |
| Utah | 100 | 100 |
| Vermont | 65 | 100 |
| Virginia | 100 | 100 |
| Washington | 100 | 100 |
| West Virginia | 100 | 100 |
| Wisconsin | 100 | 100 |
| Wyoming | 83 | 100 |

* For multi-State projects, the minimum project size is the largest of the multi-State minimums from the participating States.

ii. Small Projects

A small project is an eligible project that does not meet the minimum project size described in Section C.3.c.i.

d. Large/Small Project Requirements

For a large project to be selected, the Department must determine that the project meets seven requirements described in 23 U.S.C. 117(g) and below. If your project consists of multiple components with independent utility, the Department must determine that each component meets each requirement, to select it for an award. The requirements, and how they are considered, are listed below:

Large Project Requirement #1: The project will generate national or regional economic, mobility, or safety benefits. The Department will base its

determination on its estimate and the nature of the project's benefits.

Large Project Requirement #2: The project will be cost effective. The Department's determination will be based on its estimate of the project's benefit-cost ratio: A project is determined to be cost effective if the Department estimates that the project's benefit-cost ratio is equal to or greater than one.

Large Project Requirement #3: The project will contribute to the accomplishment of one or more of the goals described in 23 U.S.C 150. The Department will base its determination on its estimate and the nature of the project's benefits.

Large Project Requirement #4: The project is based on the results of preliminary engineering. For a project to meet this requirement, it must provide evidence that at least one of the following activities has been *completed* at the time of application submission, and therefore the project can be said to be based on the results of that activity: Environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design.

Large Project Requirement #5: With respect to related non-Federal financial commitments, one or more stable and dependable funding or financing sources are available to construct, maintain, and operate the project, and contingency amounts are available to cover unanticipated cost increases. The Department's determination will be based on the information provided in the project's Grant Funds, Sources and Uses of Project Funds section of the application. In assessing the stability and dependability of the proposed non-federal financial commitments, the Department will consider the degree to which financing sources are dedicated to the proposed purposes and are highly likely to be available within the proposed project schedule. The Department's determination will also be based on evidence of contingency funding in the project budget.

Large Project Requirement #6: The project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor. For a project to meet this requirement, the application must describe the impacts on the project of federal funding or financial assistance

being unavailable for the project, to show the project cannot be easily or efficiently completed without such assistance.

Large Project Requirement #7: The project is reasonably expected to begin construction no later than 18 months after the date of obligation of funds for the project. The Department will base its determination on the proposed project schedule and the evaluation of the project readiness evaluation team.

These seven large project requirements are discussed in greater detail in section D.2.b.vii.

For a small project to be selected, the Department must consider the cost-effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out.

e. Rural/Urban Area

This section describes the statutory definition of urban and rural areas and the minimum statutory requirements for projects that meet those definitions. For more information on how the Department consider projects in urban, rural, and low population areas as part of the selection process, see Section E.1.a. Criterion #2, and E.1.c.

The INFRA statute defines a rural area as an area outside an Urbanized Area² with a population of over 200,000. In this notice, urban area is defined as inside an Urbanized Area, as a designated by the U.S. Census Bureau, with a population of 200,000 or more.³ Rural and urban definitions differ in some other USDOT programs, including TIFIA and the FY 2018 Better Utilizing Investments to Leverage Development (BUILD) Discretionary Grants program. Cost share requirements and minimum grant awards are the same for projects located in rural and urban areas. The Department will consider a project to be in a rural area if the majority of the project (determined by geographic location(s) where the majority of the money is to be spent) is located in a rural area. However, if a project consists of multiple components, as described under section C.3.f or C.3.g., then for each separate component the Department will determine whether that component is rural or urban. In some

circumstances, including networks of projects under section C.3.g that cover wide geographic regions, this component-by-component determination may result in INFRA awards that include urban and rural funds.

f. Project Components

An application may describe a project that contains more than one component. The USDOT may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C, including the requirements for large projects described in Sections C.3.d and D.2.b.vii; (2) independently aligns well with the selection criteria specified in Section E; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of USDOT funds even if no other improvements are made in the area, and will be ready for intended use upon completion of that component's construction. If an application describes multiple components, the application should demonstrate how the components collectively advance the purposes of the INFRA program. An applicant should not add multiple components to a single application merely to aggregate costs or avoid submitting multiple applications.

Applicants should be aware that, depending upon applicable Federal law and the relationship among project components, an award funding only some project components may make other project components subject to Federal requirements as described in Section F.2.b. For example, under 40 CFR 1508.25, the NEPA review for the funded project component may need to include evaluation of all project components as connected, similar, or cumulative actions.

The Department strongly encourages applicants to identify in their applications the project components that meet independent utility standards and separately detail the costs and INFRA funding requested for each component. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses selection criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent

² For Census 2010, the Census Bureau defined an Urbanized Area (UA) as an area that consists of densely settled territory that contains 50,000 or more people. Updated lists of UAs are available on the Census Bureau website at http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/. For the purposes of the INFRA program, Urbanized Areas with populations fewer than 200,000 will be considered rural.

³ See www.transportation.gov/buildamerica/InfRAgrants for a list of Urbanized Areas with a population of 200,000 or more.

component is a part addresses selection criteria.

g. Network of Projects

An application may describe and request funding for a network of projects. A network of projects is one INFRA award that consists of multiple projects addressing the same transportation problem. For example, if an applicant seeks to improve efficiency along a rail corridor, then their application might propose one award for four grade separation projects at four different railway-highway crossings. Each of the four projects would independently reduce congestion but the overall benefits would be greater if the projects were completed together under a single award.

The USDOT will evaluate applications that describe networks of projects similar to how it evaluates projects with multiple components. Because of their similarities, the

guidance in Section C.3.f is applicable to networks of projects, and applicants should follow that guidance on how to present information in their application. As with project components, depending upon applicable Federal law and the relationship among projects within a network of projects, an award that funds only some projects in a network may make other projects subject to Federal requirements as described in Section F.2.

h. Application Limit

To encourage applicants to prioritize their INFRA submissions, each eligible applicant may submit no more than three applications. The three-application limit applies only to applications where the applicant is the lead applicant. There is no limit on applications for which an applicant can be listed as a partnering agency. If a lead applicant submits more than three applications as the lead applicant, only

the first three received will be considered.

D. Application and Submission Information

1. Address

Applications must be submitted through www.Grants.gov. Instructions for submitting applications can be found at https://www.transportation.gov/buildamerica/InFRAGrants.

2. Content and Form of Application

The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424C (Budget Information for Construction Programs), cover page, and the Project Narrative. More detailed information about the cover pages and Project Narrative follows.

a. Cover Page

Each application should contain a cover page with the following chart:

| | |
|---|--|
| <p>Basic Project Information: What is the Project Name? Who is the Project Sponsor? Was an INFRA application for this project submitted previously? (If Yes, please include title).</p> <p>Project Costs: <i>INFRA Request Amount</i> <i>Estimated Federal funding (excl. INFRA), anticipated to be used in INFRA funded future project.</i> <i>Estimated non-Federal funding anticipated to be used in INFRA funded future project.</i> <i>Future Eligible Project Cost (Sum of previous three rows)</i> <i>Previously incurred project costs (if applicable)</i> <i>Total Project Cost (Sum of 'previous incurred' and 'future eligible')</i> Are matching funds restricted to a specific project component? If so, which one?</p> <p>Project Eligibility (To be eligible, all future eligible project costs must fall into at least one of the following four categories): Approximately how much of the estimated future eligible project costs will be spent on components of the project currently located on National Highway Freight Network (NHFN)? Approximately how much of the estimated future eligible project costs will be spent on components of the project currently located on the National Highway System (NHS)? Approximately how much of the estimated future eligible project costs will be spent on components constituting railway-highway grade crossing or grade separation projects? Approximately how much of the estimated future eligible project costs will be spent on components constituting intermodal or freight rail projects, or freight projects within the boundaries of a public or private freight rail, water (including ports), or intermodal facility?</p> <p>Project Location: State(s) in which project is located. Small or large project Urbanized Area in which project is located, if applicable. Population of Urbanized Area (According to 2010 Census). Is the project located (entirely or partially) in an Opportunity Zone?</p> <p>Is the project currently programmed in the • TIP. • STIP. • MPO Long Range Transportation Plan. • State Long Range Transportation Plan. • State Freight Plan?</p> | <p>Exact Amount in year-of-expenditure dollars. Estimate in year-of-expenditure dollars.</p> <p>Please provide an estimate, in year-of-expenditure dollars, of the costs that meet this definition. Please provide an estimate, in year-of-expenditure dollars, of the costs that meet this definition. Please provide an estimate, in year-of-expenditure dollars, of the costs that meet this definition. Please provide an estimate, in year-of-expenditure dollars, of the costs that meet this definition.</p> <p>Small/Large.</p> <p>Yes/No (Please reference https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx) Please identify the specific 2011–2015 Low-Income Community Census Tract(s) (by number) that are Opportunity Zones. Yes/no (Please specify in which plans the project is currently programmed, and provide the identifying number if applicable).</p> |
|---|--|

b. Project Narrative

The Department recommends that the project narrative follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

| | |
|---|---------------------------|
| I. Project Description | See D.2.b.i |
| II. Project Location | See D.2.b.ii |
| III. Project Parties | See D.2.b.iii. |
| IV. Grant Funds, Sources and Uses of all Project Funding. | See D.2.b.iv |
| V. Merit Criteria | See D.2.b.v |
| VI. Project Readiness | See D.2.b.vi and E.1.c.ii |
| VII. Large/Small Project Requirements. | See D.2.b.vii and C.3.d. |

The project narrative should include the information necessary for the Department to determine that the project satisfies project requirements described in Sections B and C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by the Department. The Department may ask any applicant to supplement data in its application, but expects applications to be complete upon submission.

In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. The Department recommends that the project narrative be prepared with standard formatting preferences (*i.e.*, a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 25 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 25-page limit are documents supporting assertions or conclusions made in the 25-page project narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different USDOT financial assistance program may be referenced and described as unchanged. The Department recommends using appropriately descriptive final names (*e.g.*, "Project Narrative," "Maps," "Memoranda of Understanding and Letters of Support," etc.) for all

attachments. The USDOT recommends applications include the following sections:

i. Project Summary

The first section of the application should provide a concise description of the project, the transportation challenges that it is intended to address, and how it will address those challenges. This section should discuss the project's history, including a description of any previously incurred costs. The applicant may use this section to place the project into a broader context of other infrastructure investments being pursued by the project sponsor.

ii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location. If the project is located within the boundary of a Census-designated Urbanized Area, the application should identify the Urbanized Area.

iii. Project Parties

This section of the application should list all project parties, including details about the proposed grant recipient and other public and private parties who are involved in delivering the project, such as port authorities, terminal operators, freight railroads, shippers, carriers, freight-related associations, third-party logistics providers, and freight industry workforce organizations.

iv. Grant Funds, Sources and Uses of Project Funds

This section of the application should describe the project's budget. At a minimum, it should include:

(A) Previously incurred expenses, as defined in Section C.3.c.

(B) Future eligible costs, as defined in Section C.3.c.

(C) For all funds to be used for future eligible project costs, the source and amount of those funds.

(D) For non-Federal funds to be used for future eligible project costs, documentation of funding commitments should be referenced here and included as an appendix to the application.

(E) For Federal funds to be used for future eligible project costs, the amount, nature, and source of any required non-Federal match for those funds.

(F) A budget showing how each source of funds will be spent. The budget should show how each funding

source will share in each major construction activity, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal; INFRA; and other Federal. If the project contains components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget should be detailed enough to demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

(G) Information showing that the applicant has budgeted sufficient contingency amounts to cover unanticipated cost increases.

(H) The amount of the requested INFRA funds that would be subject to the limit on freight rail, port, and intermodal infrastructure described in Section B.2.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used. For example, if a source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a source of funds is available for expenditure only during a fixed period, the application should describe that restriction. Complete information about project funds will ensure that the Department's expectations for award execution align with any funding restrictions unrelated to the Department, even if an award differs from the applicant's request.

v. Merit Criteria

This section of the application should demonstrate how the project aligns with the Merit Criteria described in Section E.1 of this notice. The Department encourages applicants to address each criterion or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but the following organization, which addresses each criterion separately, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about how the applicant should organize their application. Guidance describing how the Department will evaluate projects against the Merit Criteria is in Section

E.1 of this notice. Applicants also should review that section before considering how to organize their application.

Criterion #1: Support for National or Regional Economic Vitality

This section of the application should describe the anticipated outcomes of the project that support the Economic Vitality criterion (described in Section E.1.a of this notice). The applicant should summarize the conclusions of the project's benefit-cost analysis, including estimates of the project's benefit-cost ratio and net benefits. The applicant should also describe economic impacts and other data-supported benefits that are not included in the benefit-cost analysis. For the purposes of considering whether the project primarily serves freight and goods movement, the application should include estimates of the volume and share of freight (trucks, rail carloads, TEUs, tonnage, or other relevant measure) that travels through the project area and identify the sources for those estimates.

Consistent with the Department's ROUTES Initiative, the Department encourages applicants to describe how the project would address the unique challenges of rural transportation networks in safety, infrastructure condition, and passenger and freight usage, should the project serve a rural location.

The benefit-cost analysis itself should be provided as an appendix to the project narrative, as described in Section D.2.d. of this notice.

Criterion #2: Leveraging of Federal Funding

While the Leveraging Criterion will be assessed according to the methodology described in Section E.1.a., this section of the application may be used to include additional information that may strengthen the Department's understanding of the project sponsor's effort to improve non-Federal leverage. Please describe the source of all matching funds in the project's financial plan. Please state the share of matching funds coming from Federal funds, including Federal formula funds that may be passed through a state entity.

Criterion #3: Potential for Innovation

This section of the application should contain sufficient information to evaluate how the project includes or enables innovation in: (1) The accelerated deployment of innovative technology, including expanded access to broadband; (2) use of innovative permitting, contracting, and other

project delivery practices; and (3) innovative financing. If the project does not address a particular innovation area, the application should state this fact. Please see Section E.1.a for additional information.

Criterion #4: Performance and Accountability

This section of the application should include sufficient information to evaluate how the applicant will advance the Performance and Accountability program objective. In general, the applicant should indicate which (if any) accountability measures they are willing to implement or have implemented, along with the specific details necessary for the Department to evaluate their accountability measure. The applicant should also address the lifecycle cost component of this criterion in this section. See Section E.1.a for additional information.

vi. Project Readiness

This section of the application should include information that, when considered with the project budget information presented elsewhere in the application, is sufficient for the Department to evaluate whether the project is reasonably expected to begin construction in a timely manner. To assist the Department's project readiness assessment, the applicant should provide the information requested on technical feasibility, project schedule, project approvals, and project risks, each of which is described in greater detail in the following sections. Applicants are not required to follow the specific format described here, but this organization, which addresses each relevant aspect of project readiness, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about what information applicants should provide and how the applicant should organize their application. Guidance describing how the Department will evaluate a project's readiness is described in section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

(A) Technical Feasibility. The applicant should demonstrate the technical feasibility of the project with engineering and design studies and activities; the development of design criteria and/or a basis of design; the

basis for the cost estimate presented in the INFRA application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants should include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

(B) Project Schedule. The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (programming on the Statewide Transportation Improvement Program), start and completion of NEPA and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications and estimates (PS&E); procurement; State and local approvals; project partnership and implementation agreements including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

(1) All necessary activities will be complete to allow INFRA funds to be obligated sufficiently in advance of the statutory deadline (September 30, 2023 for FY 2020 funds), and that any unexpected delays will not put the funds at risk of expiring before they are obligated;

(2) the project can begin construction quickly upon obligation of INFRA funds, and that the grant funds will be spent expeditiously once construction starts; and

(3) all real property and right-of-way acquisition will be completed in a timely manner in accordance with 49 CFR part 24, 23 CFR part 710, and other applicable legal requirements or a statement that no acquisition is necessary.

(C) Required Approvals.

(1) Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State, and local requirements and completion of the NEPA process. Specifically, the application should include:

(a) Information about the NEPA status of the project. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a

website link or other reference to the final Categorical Exclusion, Finding of No Significant Impact, Record of Decision, and any other NEPA documents prepared. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements.

(b) Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies,⁴ indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State, or local requirements, and when such approvals are expected. Applicants should provide a website link or other reference to copies of any reviews, approvals, and permits prepared.

(c) Environmental studies or other documents—preferably through a website link—that describe in detail known project impacts, and possible mitigation for those impacts.

(d) A description of discussions with the appropriate USDOT modal administration field or headquarters office regarding the project's compliance with NEPA and other applicable Federal environmental reviews and approvals.

(e) A description of public engagement about the project that has occurred, including details on the degree to which public comments and commitments have been integrated into project development and design.

(2) State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning approvals and STIP or TIP funding. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

(3) Federal Transportation Requirements Affecting State and Local

Planning. The planning requirements applicable to the Federal-aid highway program apply to all INFRA projects, but for port, freight, and rail projects, planning requirements of the operating administration that will administer the INFRA project will also apply,⁵ including intermodal projects located at airport facilities.⁶ Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included in such documents. If the project is not included in a relevant planning document at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document.

To the extent possible, freight projects should be included in a State Freight Plan and supported by a State Freight Advisory Committee (49 U.S.C. 70201, 70202). Applicants should provide links or other documentation supporting this consideration.

⁵ In accordance with 23 U.S.C. 134 and 135, all projects requiring an action by the Federal Highway Administration (FHWA) must be in the applicable plan and programming documents (e.g., metropolitan transportation plan, transportation improvement program (TIP) and statewide transportation improvement program (STIP)). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. Inclusion in the STIP is required under certain circumstances. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive an INFRA grant until it is included in such plans. Projects not currently included in these plans can be amended by the State and metropolitan planning organization (MPO). Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans to receive an INFRA grant. Port, freight rail, and intermodal projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. However, applicants seeking funding for freight projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals. Means of demonstrating this consistency would include whether the project is in a TIP or a State Freight Plan that conforms to the requirements Section 70202 of Title 49 prior to the start of construction. Port planning guidelines are available at StrongPorts.gov.

⁶ Projects at grant obligated airports must be compatible with the FAA-approved Airport Layout Plan (ALP), as well as aeronautical surfaces associated with the landing and takeoff of aircraft at the airport. Additionally, projects at an airport: Must comply with established Sponsor Grant Assurances, including (but not limited to) requirements for non-exclusive use facilities, consultation with users, consistency with local plans including development of the area surrounding the airport, and consideration of the interest of nearby communities, among others; and must not adversely affect the continued and unhindered access of passengers to the terminal.

Because projects have different schedules, the construction start date for each INFRA grant will be specified in the project-specific agreements signed by relevant modal administration and the grant recipients, based on critical path items that applicants identify in the application and will be consistent with relevant State and local plans.

(D) Assessment of Project Risks and Mitigation Strategies. Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake to mitigate those risks. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

To the extent it is unfamiliar with the Federal program, the applicant should contact USDOT modal field or headquarters offices as found at www.transportation.gov/infragrants for information on what steps are pre-requisite to the obligation of Federal funds to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

vii. Large/Small Project Requirements

To select a large project for award, the Department must determine that the project—as a whole, as well as each independent component of the project—satisfies several statutory requirements enumerated at 23 U.S.C. 117(g) and restated in the table below. The application must include sufficient information for the Department to make these determinations for both the project as a whole and for each independent component of the project. Applicants should use this section of the application to summarize how their project and, if present, each independent project component, meets each of the following requirements. Applicants are not required to reproduce the table below in their application, but following this format will help evaluators identify the relevant information that supports each large project determination. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant

⁴ Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

substantive information in other sections of the application.

| Large project determination | Guidance |
|--|---|
| <p>1. Does the project generate national or regional economic, mobility, or safety benefits?</p> | <p>Summarize the economic, mobility, and safety benefits of the project and independent project components, and describe the scale of their impact in national or regional terms. This information may be found in Section V. of the application.</p> |
| <p>2. Is the project cost effective?</p> | <p>Highlight the results of the benefit cost analysis, as well as the analyses of independent project components if applicable, described in Section V of the application.</p> |
| <p>3. Does the project contribute to one or more of the Goals listed under 23 U.S.C. 150 (and shown below)?</p> <p>(1) National Goals.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:</p> <p>(2) Safety.—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.</p> <p>(3) Infrastructure condition.—To maintain the highway infrastructure asset system in a state of good repair.</p> <p>(4) Congestion reduction.—To achieve a significant reduction in congestion on the National Highway System.</p> <p>(5) System reliability.—To improve the efficiency of the surface transportation system.</p> <p>(6) Freight movement and economic vitality.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.</p> <p>(7) Environmental sustainability.—To enhance the performance of the transportation system while protecting and enhancing the natural environment.</p> <p>(8) Reduced project delivery delays.—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.</p> | <p>Specify the Goal(s) and summarize how the project and independent project components contributes to that goal(s). This information may also be found in Section I or Section V.</p> |
| <p>4. Is the project based on the results of preliminary engineering?</p> | <p>For a project or independent project component to be based on the results of preliminary engineering, please indicate which of the following activities have been <i>completed</i> as of the date of application submission:</p> <ul style="list-style-type: none"> • Environmental Assessments. • Topographic Surveys. • Metes and Bounds Surveys. • Geotechnical Investigations. • Hydrologic Analysis. • Utility Engineering. • Traffic Studies. • Financial Plans. • Revenue Estimates. • Hazardous Materials Assessments. • General estimates of the types and quantities of materials. • Other work needed to establish parameters for the final design. |
| <p>5a. With respect to non-Federal financial commitments, does the project have one or more stable and dependable funding or financing sources to construct, maintain, and operate the project?</p> | <p>Please indicate funding source(s) and amounts that will account for all project costs for the project and each independent project component, if applicable. Historical trends, current policy, or future feasibility analyses can be used as evidence to substantiate the stable and dependable nature of the non-Federal funding or financing.</p> |
| <p>5b. Are contingency amounts available to cover unanticipated cost increases?</p> | <p>Contingency amounts are often, but not always, expressly shown in project budgets or the SF-424C. If your project cost estimates include an implicit contingency calculation, please say so directly.</p> |
| <p>6. Is it the case that the project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor?</p> | <p>Describe the impact on the proposed project of no federal funding being available for that project, including the INFRA grant, sufficient to demonstrate that the project cannot be completed easily or efficiently without Federal funding or financial assistance. Negative impacts to the project's costs or schedule are frequently used examples.</p> |
| <p>7. Is the project reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project?</p> | <p>Please reference project budget and schedule when providing evidence. If the project has multiple independent components, or will be obligated and constructed in multiple phases, please provide sufficient information to show that each component meets this requirement.</p> |

For a small project to be selected, the Department must consider the cost effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out. If an applicant seeks an award for a small project, it should use this section to provide information on the project's cost effectiveness and the project's effect on the mobility in its State and region, or refer to where else the information can be found in the application.

c. Guidance for Benefit-Cost Analysis

This section describes the recommended approach for the completion and submission of a benefit-cost analysis (BCA) as an appendix to the Project Narrative. The results of the analysis should be summarized in the Project Narrative directly, as described in Section D.2.b.v.

Applicants should delineate each of their project's expected outcomes in the form of a complete BCA to enable the Department to consider cost-effectiveness (small projects), determine whether the project will be cost effective (large projects), estimate a benefit-cost ratio and calculate the magnitude of net benefits and costs for the project. In support of each project for which an applicant seeks funding, the applicant should submit a BCA that quantifies the expected benefits and costs of the project against a no-build baseline. Applicants should use a real discount rate (*i.e.*, the discount rate net of the inflation rate) of 7 percent per year to discount streams of benefits and costs to their present value in their BCA.

The primary economic benefits from projects eligible for INFRA grants are likely to include savings in travel time costs, vehicle operating costs, and safety costs for both existing users of the improved facility and new users who may be attracted to it as a result of the project. Reduced damages from vehicle emissions and savings in maintenance costs to public agencies may also be quantified. Applicants may describe other categories of benefits in the BCA that are more difficult to quantify and value in economic terms, such as improving the reliability of travel times or improvements to the existing human and natural environments (such as increased connectivity, improved public health, storm water runoff mitigation, and noise reduction), while also providing numerical estimates of the magnitude and timing of each of these additional impacts wherever possible. Any benefits claimed for the project, both quantified and unquantified, should be clearly tied to the expected outcomes of the project.

The BCA should include the full costs of developing, constructing, operating, and maintaining the proposed project (including both previously incurred and future costs), as well as the expected timing or schedule for costs in each of these categories. The BCA may also consider the present discounted value of any remaining service life of the asset at the end of the analysis period (net of future maintenance and rehabilitation costs) as a deduction from the estimated costs. The costs and benefits that are compared in the BCA should also cover the same project scope.

The BCA should carefully document the assumptions and methodology used to produce the analysis, including a description of the baseline, the sources of data used to project the outcomes of the project, and the values of key input parameters. Applicants should provide all relevant files used for their BCA, including any spreadsheet files and technical memos describing the analysis (whether created in-house or by a contractor). The spreadsheets and technical memos should present the calculations in sufficient detail and transparency to allow the analysis to be reproduced by USDOT evaluators. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar terms and discounting to their present values, are available in the Department's guidance for conducting BCAs for projects seeking funding under the INFRA program (see <https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance>).

Applicants for freight projects within the boundaries of a freight rail, water (including ports), or intermodal facility should also quantify the benefits of their proposed projects for freight movements on the National Highway Freight Network, and should demonstrate that the Federal share of the project funds only elements of the project that provide public benefits.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make an INFRA grant to an applicant until the applicant has complied with all applicable unique

entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make an INFRA grant, the Department may determine that the applicant is not qualified to receive an INFRA grant and use that determination as a basis for making an INFRA grant to another applicant.

4. Submission Dates and Timelines

a. Deadline

Applications must be submitted by 11:59 p.m. EST February 25, 2020. The *Grants.gov* "Apply" function will open by January 15, 2020.

To submit an application through *Grants.gov*, applicants must:

- (1) Obtain a Data Universal Numbering System (DUNS) number;
- (2) Register with the System Award for Management (SAM) at www.sam.gov; and
- (3) Create a *Grants.gov* username and password;
- (4) The E-business Point of Contact (POC) at the applicant's organization must also respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the POC as an Authorized Organization Representative (AOR). Please note that there can only be one AOR per organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at <http://www.grants.gov/web/grants/applicants/applicant-faqs.html>. If interested parties experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518-4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. EST.

b. Consideration of Application

Only applicants who comply with all submission deadlines described in this notice and submit applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

c. Late Applications

Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties outlined in Section D.4.d.

d. Late Application Policy

Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact INFRAgrants@dot.gov prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue experienced;

(2) Screen capture(s) of the technical issues experienced along with corresponding *Grants.gov* "Grant tracking number";

(3) The "Legal Business Name" for the applicant that was provided in the SF-424;

(4) The AOR name submitted in the SF-424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After the Department reviews all information submitted and contacts the *Grants.gov* Help Desk to validate reported technical issues, USDOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov*. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

E. Application Review Information

1. Criteria

a. Merit Criteria

The Department will consider the extent to which the project addresses the follow criteria, which are explained in greater detail below and reflect the key program objectives described in Section A.2: (1) Support for national or regional economic vitality; (2) leveraging of Federal funding; (3) potential for innovation; and (4) performance and accountability. The Department is neither weighting these criteria nor requiring that each application address every criterion, but the Department expects that competitive applications will substantively address all four criteria.

Criterion #1: Support for National or Regional Economic Vitality

The Department will consider the extent to which a project would support the economic vitality of either the nation or a region. To the extent possible, the Department will rely on quantitative, data-supported analysis to assess how well a project addresses this criterion, including an assessment of the applicant-supplied benefit-cost analysis described in Section D.2.d. In addition to considering the anticipated outcomes of the project that align with this criterion, the Department will consider estimates of the project's benefit-cost ratio and net quantifiable benefits.

Based on the Department's assessment, the Department will group projects into ranges based on their estimated benefit costs ratio (BCR) and net present value (NPV), and assign a level of confidence associated with each project's assigned BCR and NPV ratings. The Department will use these ranges for BCR: Less than 1; 1–1.5; 1.5–3; and greater than 3. The Department will use these ranges for NPV: Less than \$0; \$0–\$50,000,000; \$50,000,000–\$250,000,000; and greater than \$250,000,000. The confidence levels are high, medium, and low.

Projects which primarily serve freight and goods movement play an important role in supporting economic vitality. Accordingly, the Department anticipates awarding some INFRA funding to projects which primarily serve freight and goods movement to advance the objective of supporting national and regional economic vitality.

Criterion #2: Leveraging of Federal Funding

To maximize the impact of INFRA awards, the Department seeks to leverage INFRA funding with non-Federal contributions. To evaluate this criterion, the Department will assign a rating to each project based on how the calculated non-Federal share of the project's future eligible project costs compares with other projects proposed for INFRA funding. The Department will sort large and small project applications' non-Federal leverage percentage from high to low, and the assigned ratings will be based on quintile: projects in the 80th percentile and above receive the highest rating; the 60th–79th percentile receive the second highest rating; 40th–59th, the third highest; 20th–39th, the fourth highest; and 0–19th, the lowest rating.

USDOT recognizes that applicants have varying abilities and resources to contribute non-Federal contributions. If an applicant describes broader fiscal

constraints that affect its ability to generate or draw on non-Federal contributions, the Department may consider those constraints. Relevant constraints may include the size of the population taxed to supply the matching funds, the wealth of that population, or other constraints on the raising of funds. In addition, the Department may consider whether there are obstacles to collecting non-Federal revenue from a project's beneficiaries, including the extent to which a project's beneficiaries reside in the sponsor's jurisdiction.

This evaluation criterion is separate from the statutory cost share requirements for INFRA grants, which are described in Section C.2. Those statutory requirements establish the minimum permissible non-Federal share; they do not define a competitive INFRA project. Unlike how the Department evaluates cost share for eligibility purposes (as described in section C.2 of this notice), for the purposes of evaluating leverage as a competitive selection criterion, the Department will consider the proceeds of Federal assistance under chapter 6 of Title 23, United States Code or sections 501 through 504 of the Railroad and Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210), as amended, to be part of the Federal share of project costs. Applications that require other discretionary funding from the Department to complete the project's funding package will be considered less competitive.

Criterion #3: Potential for Innovation

The Department seeks to use the INFRA program to encourage innovation in three areas: (1) The accelerated deployment of innovative technology and expanded access to broadband; (2) use of innovative permitting, contracting, and other project delivery practices; and (3) innovative financing. The project will be assigned an innovation rating based on how it cumulatively addresses these areas. Applications that address at least two of these three areas will be assigned a high rating. Applications that address one of these areas will be assigned a medium rating. Applications that address none of these areas will be assigned a low rating.

In Innovation Area #1: Technology, the application will be determined to have addressed the Technology Innovation Area if the INFRA project incorporates any of the following:

- Conflict detection and mitigation technologies (e.g., intersection alerts, signal prioritization, or smart traffic signals);

- Dynamic signaling or pricing systems to reduce congestion;
- Signage and design features that facilitate autonomous or semi-autonomous vehicle technologies;
- Applications to automatically capture and report safety-related issues (e.g., identifying and documenting near-miss incidents);
- V2X Technologies (e.g., technology that facilitates passing of information between a vehicle and any entity that may affect the vehicle);
- Cybersecurity elements to protect safety-critical systems;
- Technology at land and sea ports of entry that reduces congestion, wait times, and delays, while maintaining or enhancing the integrity of our border;
- Work Zone data exchanges or related data exchanges
- Other Intelligent Transportation Systems (ITS) that directly benefit the project's users.

The application will also address the Technology Innovation Area if the project facilitates broadband deployment and the installation of high-speed networks concurrent with project construction. The Department is particularly interested in broadband deployment in rural areas, per Presidential Executive Order 13821 *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America*.

In Innovation Area #2: Project Delivery, the Department will assess whether the applicant intends to pursue an innovative strategy to improve project delivery. These strategies will result in more efficient project implementation. Some of these strategies may require the use of a SEP-14 or SEP-15 waiver, but many do not: An application can address this innovation area without requiring a waiver. Examples of innovative project delivery include:

- Contracting/Procurement:
 - *Indefinite Quantity/Indefinite Delivery Contracting*
 - *Alternative Pavement Type Bidding*
 - *No Excuse Bonuses*
 - *Lump Sum Bidding*
 - *Best Value Procurement*
 - *System Integrator Contracts*
 - *Progressive Design-Build*
 - *P3 DBFOM Procurements*
- Environmental Requirements
 - *NEPA/Section 404 Merger*
 - *Use of Permitting/Authorization Agency Liaisons*
 - *Establishment of State/Local "One-Stop-Shop" for Permitting*
 - *Programmatic Agreements*
- Every Day Counts Initiative
 - *Use of proven technologies and*

innovations to shorten and enhance project delivery listed at https://www.fhwa.dot.gov/innovation/everydaycounts/edc_innovation.cfm

Finally, in Innovation Area #3, Innovative Financing, the Department will consider if the project financial plan incorporates funding or financing from innovative sources, or if the applicant describes recent or pending efforts to raise significant new revenue for transportation investment across its program.

Examples of innovative sources in a financial plan include:

- *Private Sector contributions, excluding donated right-of-way, amounting to at least \$5 million,*
- *Revenue from the competitive sale or lease of publicly owned or operated asset, or*
- *Financing supported by direct project user fees*

Examples of significant new revenue—provided it is dedicated to transportation investment across an applicant's program—include:

- *Revenue resulting from recent or pending increases to sales or fuel taxes*
- *Revenue resulting from the recent or pending implementation of tolling*
- *Revenue resulting from the recent or pending adoption of value capture strategies such as tax-increment financing*
- *Revenue resulting from the recent or pending competitive sale or lease of publicly owned or operated assets*

Criterion #4: Performance and Accountability

The Department encourages applicants to describe a credible plan to address the full lifecycle costs associated with the project and implement an accountability measure as described in Section A.2.d of this NOFO.

A credible plan to address full lifecycle costs should include, at a minimum, (1) an estimate of the lifecycle costs of the project; (2) an identified source of funding that will be sufficient to pay for operation and maintenance of the project; and (3) a description of controls in place to ensure the identified funding will not be diverted away from operation and maintenance. Examples of such controls include if a private sector entity is contractually obligated to maintain the project, if a project sponsor has a demonstrated history of fully funding maintenance on its assets, or if the sponsor describes an asset management plan or strategy.

Applicants intending to address the accountability measure portion of this

criterion should describe how they meet at least one of the three options below:

(1) The applicant should agree to meet a specific construction start and completion date, detailed in the application. If the project sponsor does not meet these deadlines, the project will be subject to forfeit or return of up to 10% of the awarded funds, or \$10 million, whichever is lower.

(2) The applicant should propose a specific indicator of project success that will be evident within 12 months of project completion. The indicator should relate to a benefit estimated in the BCA (e.g., travel time savings), and the level of performance should be consistent with the estimates in the BCA. If the project fails to produce this specific outcome in the time allotted, it will be subject to forfeit or return of up to 10% of the awarded funds, or \$10 million, whichever is lower.

The project will be assigned a Performance and Accountability rating based on how it addresses these areas. Applications that address both lifecycle costs and accountability measures will receive a high rating. Applications that address either lifecycle costs or accountability measures, but not both, will receive a medium rating. Applications that address neither area will receive a low rating.

b. Additional Considerations

i. Geographic Diversity

By statute, when selecting INFRA projects, the Department must consider contributions to geographic diversity among recipients, including the need for a balance between the needs of rural and urban communities. However, the Department also recognizes that it can better balance the needs of rural and urban communities if it does not take a binary view of urban and rural.

Accordingly, in addition to considering whether a project is "rural" as defined by the INFRA statute and described in section C.3.e, when balancing the needs of rural and urban communities, the Department may consider the actual population of the community that each project is located in.

The Department will also consider whether the project is located in a qualified opportunity zone, pursuant to 26 U.S.C. 1400Z-1. A project located in a qualified opportunity zone is more competitive than a similar project that is not located in a qualified opportunity zone.

ii. Project Readiness

During application evaluation, the Department considers project readiness in two ways: To assess the likelihood of

successful project delivery and to confirm that a project will satisfy statutory readiness requirements.

First, the Department will consider significant risks to successful completion of a project, including risks associated with environmental review, permitting, technical feasibility, funding, and the applicant's capacity to manage project delivery. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks is more competitive than a comparable project with unaddressed risks.

Second, by statute, the Department cannot award a large project unless that project is reasonably expected to begin construction within 18 months of obligation of funds for the project. Obligation occurs when a selected applicant enters a written, project-specific agreement with the Department and is generally after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. Depending on the nature of pre-construction activities included in the awarded project, the Department may obligate funds in phases. Preliminary engineering and right-of-way acquisition activities, such as environmental review, design work, and other preconstruction activities, do not fulfill the requirement to begin construction within 18 months of obligation for large projects. By statute, INFRA funds must be obligated within three years of the end of the fiscal year for which they are authorized. Therefore, for awards with FY 2020 funds, the Department will determine that large projects with an anticipated obligation date beyond September 30, 2023 are not reasonably expected to begin construction within 18 months of obligation.

iii. Previous Awards

The Department may consider whether the project has previously received an award from the BUILD, INFRA, or other departmental discretionary grant programs.

2. Review and Selection Process

The USDOT will review all eligible applications received before the application deadline. The INFRA process consists of a Technical Evaluation phase and Senior Review. In the Technical Evaluation phase, teams will, for each project, determine whether the project satisfies statutory requirements and rate how well it addresses the selection criteria. The

Senior Review Team will consider the applications and the technical evaluations to determine which projects to advance to the Secretary for consideration. The Secretary will ultimately select the projects for award. A Quality Control and Oversight Team will ensure consistency across project evaluations and appropriate documentation throughout the review and selection process.

3. Additional Information

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the Secretary will announce awarded projects by posting a list of selected projects at <https://www.transportation.gov/buildamerica/INFRAgrants>. Following the announcement, the Department will contact the point of contact listed in the SF 424 to initiate negotiation of a project-specific agreement.

2. Administrative and National Policy Requirements

a. Safety Requirements

The Department will require INFRA projects to meet two general requirements related to safety. First, INFRA projects must be part of a thoughtful, data-driven approach to safety. Each State maintains a strategic highway safety plan.⁷ INFRA projects will be required to incorporate appropriate elements that respond to priority areas identified in that plan and are likely to yield safety benefits. Second, INFRA projects will incorporate

⁷Information on State-specific strategic highway safety plans is available at https://safety.fhwa.dot.gov/shsp/other_resources.cfm.

appropriate safety-related activities that the Federal Highway Administration (FHWA) has identified as "proven safety countermeasures" due to their history of demonstrated effectiveness.⁸

After selecting INFRA recipients, the Department will work with those recipients on a project-by-project basis to determine the specific safety requirements that are appropriate for each award.

b. Other Administrative and Policy Requirements

All INFRA awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by USDOT at 2 CFR part 1201. A project carried out under the INFRA program will be treated as if the project is located on a Federal-aid highway. Additionally, applicable Federal laws, rules and regulations of the relevant operating administration administering the project will apply to the projects that receive INFRA grants, including planning requirements, Stakeholder Agreements, and other requirements under the Department's other highway, transit, rail, and port grant programs. For an illustrative list of the applicable laws, rules, regulations, executive orders, policies, guidelines, and requirements as they relate to an INFRA grant, please see http://www.ops.fhwa.dot.gov/Freight/infrastructure/nsfhp/fy2016_gr_exhbt_c/index.htm.

As expressed in Executive Orders 13788 of April 18, 2017 and 13858 of January 31, 2019, it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States in the terms and conditions of Federal financial assistance awards. All INFRA projects are subject to the Buy America requirement at 23 U.S.C. 313. The Department expects all INFRA applicants to comply with that requirement without needing a waiver. To obtain a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project.

The applicability of Federal requirements to a project may be affected by the scope of the NEPA reviews for that project. For example, under 23 U.S.C. 313(g), Buy America requirements apply to all contracts that

⁸Information on FHWA proven safety countermeasures is available at: <https://safety.fhwa.dot.gov/provencountermeasures/>.

are eligible for assistance under title 23, United States Code, and are carried out within the scope of the NEPA finding, determination, or decision regardless of the funding source of such contracts if at least one contract is funded with Title 23 funds.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

INFRA projects involving vehicle acquisition must involve only vehicles that comply with applicable Federal Motor Vehicle Safety Standards and Federal Motor Vehicle Safety Regulations, or vehicles that are exempt from Federal Motor Carrier Safety Standards or Federal Motor Carrier Safety Regulations in a manner that allows for the legal acquisition and deployment of the vehicle or vehicles.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for an INFRA grant must submit the Federal Financial Report (SF-425) on the financial condition of the project and the project's progress, as well as an Annual Budget Review and Program Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the INFRA program.

b. Reporting of Matters Related to Integrity and Performance

If the total value of a selected applicant's currently active grants,

cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Office of the Secretary via email at INFRAgrants@dot.gov. For other INFRA program questions, please contact Paul Baumer at (202) 366-1092. A TDD is available for individuals who are deaf or hard of hearing at 202-366-3993. In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on USDOT's website at <https://www.transportation.gov/buildamerica/INFRAgrants>. To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact USDOT directly, rather than through intermediaries or third parties, with questions. DOT staff may also conduct briefings on the BUILD Transportation grant selection and award process upon request.

H. Other Information

1. Protection of Confidential Business Information

All information submitted as part of, or in support of, any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial

information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions.

The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, USDOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

2. Publication of Application Information

Following the completion of the selection process and announcement of awards, the Department intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for the information properly marked as described in Section H.1., the Department may make application narratives publicly available or share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

3. Department Feedback on Applications

The Department strives to provide as much information as possible to assist applicants with the application process. The Department will not review applications in advance, but Department staff are available for technical questions and assistance. To efficiently use Department resources, the Department will prioritize interactions with applicants who have not already received a debrief on their FY 2019 INFRA application. Program staff will address questions to INFRAgrants@dot.gov throughout the application period.

Issued in Washington, DC, on January 13, 2020.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2020-00925 Filed 1-21-20; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Information Collection Renewal; Comment Request; Recordkeeping Requirements for Securities Transactions**

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). In accordance with the requirements of the PRA, the OCC 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 its information collection titled, "Recordkeeping Requirements for Securities Transactions."

DATES: Comments must be received on or before March 23, 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, 1557-0142, 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 "1557-0142" 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 collection¹ by any of the following methods:

- *Viewing Comments Electronically:*

Go to www.reginfo.gov. Click on the "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 "1557-0142" or "Recordkeeping Requirements for Securities Transactions." 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, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E-218, 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: Recordkeeping Requirements for Securities Transactions.

OMB Number: 1557-0142.

Description: The information collection requirements in 12 CFR parts 12 and 151 are required to ensure that national banks and Federal savings associations comply with securities laws and to improve the protections afforded to persons who purchase and sell securities through these financial institutions. Parts 12 and 151 establish recordkeeping and confirmation requirements applicable to certain securities transactions effected by national banks or Federal savings associations for customers. The transaction confirmation information required by these regulations ensures that customers receive a record of each securities transaction and that both financial institutions and the OCC have the records necessary to monitor compliance with securities laws and regulations. The OCC uses the required information in the course of its examinations to evaluate, among other things, an institution's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR parts 12 and 151 are as follows:

- 12 CFR 12.3 requires a national bank effecting securities transactions for customers to maintain certain records for at least three years. 12 CFR 12.3(b) provides that the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

- 12 CFR 151.50 requires a Federal savings association effecting securities transactions for customers to maintain certain records for at least three years. 12 CFR 151.60 provides that the records required by 12 CFR 151.50 must clearly and accurately reflect the information required and provide an adequate basis for audit of the information.

- 12 CFR 12.4 requires a national bank to give or send to the customer a written notification of the transaction at or before completion of the securities transaction or, if using a confirmation from a registered broker/dealer, to send a copy of that confirmation within one business day from the bank's receipt of the confirmation from the broker dealer. Section 12.4 also establishes the required minimum disclosures for a customer's securities transactions.

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.

- 12 CFR 151.70 requires a Federal savings association that effects a securities transaction for a customer to give or send that customer a written notice of the transaction or give or send the customer the registered broker-dealer confirmation. 12 CFR 151.80 establishes when a Federal savings association must provide notice if it elects to comply with § 151.70 by using a broker-dealer confirmation and also requires the Federal savings association to provide a statement of the source and amount of any remuneration it has received or will receive in connection with the transaction, unless it has determined remuneration in a written agreement with the customer. 12 CFR 151.90 establishes when a Federal savings association must provide notice if it elects to comply with § 151.70 by providing the customer with a written notice and establishes the minimum disclosures that must be included in that notice. 12 CFR 151.90 requires a Federal savings association to give or send the written notice to the customer at or before the completion of the securities transaction.

- 12 CFR 12.5 sets forth notification procedures that a national bank may elect to use, as an alternative to complying with § 12.4, to notify customers of securities transactions for accounts in which the bank does not exercise investment discretion, trust transactions, agency transactions, and certain periodic plan transactions.

- 12 CFR 151.100 describes notification procedures that a Federal savings association may use, as an alternative to complying with 12 CFR 151.70, for customer accounts in which the savings association does not exercise investment discretion, certain accounts for which it exercises investment discretion in other than an agency capacity, trust transactions, agency transactions, certain periodic plan transactions, collective investment fund transactions, and money market funds.

- 12 CFR 12.7(a) requires national banks to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform certain securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts for certain types of orders; provide for crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where permissible under applicable law; and require certain officers and employees to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

- 12 CFR 151.140 requires Federal savings associations that effect securities transactions for customers to maintain and follow policies and procedures and sets forth the minimum requirements for such policies and procedures. These policies and procedures must assign responsibility for the supervision of employees who perform certain securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts for certain types of orders; provide for crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where permissible under applicable law; and require certain officers and employees to file personal securities trading reports as required by 12 CFR 151.150.

- 12 CFR 12.7(a)(4) requires certain national bank officers and employees involved in the securities trading process to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

- 12 CFR 151.150 requires certain Federal savings association officers and employees to report to the savings association personal transactions in securities made by them or on their behalf in which they have a beneficial interest. 12 CFR 151.150(a) sets forth the information to be included in the report and requires the report to be filed no later than 30 days after the end of each calendar quarter. 12 CFR 12.8 requires a national bank seeking a waiver of one or more of the requirements of 12 CFR 12.2 through 12.7 to file a written request for waiver with the OCC.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 355.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,718 hours.

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 burden of the collection of information;

(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 15, 2020.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020-00945 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Financial Sector Critical Infrastructure Cybersecurity Survey

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 23, 2020.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury Office of Cybersecurity and Critical Infrastructure Protection, 1500 Pennsylvania Ave. NW, Room 1132, Washington, DC 20220, or email at OCIP@treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Elizabeth Irwin by emailing OCIP@treasury.gov, calling (202) 622-3376, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Title: Financial Sector Critical Infrastructure Cybersecurity Survey.

OMB Control Number: 1505-NEW.

Type of Review: New Collection.

Description: The Office of Cybersecurity and Critical Infrastructure Protection (OCCIP) has proposed a new collection to better understand the cybersecurity risk to U.S. financial services sector and financial services critical infrastructure. OCCIP requires this information to enhance the security

and resilience of financial services sector critical infrastructure and reduce operational risk. This information collection will support OCCIP's efforts to identify cybersecurity and operational risks to and interdependencies within U.S. financial services sector critical infrastructure and to work collaboratively with industry and interagency partners to develop risk management and operational resilience initiatives.

Form: None.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 75.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 225.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,800.

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. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Elizabeth R. Irwin,

Senior Cyber Policy Advisor.

[FR Doc. 2020-00898 Filed 1-21-20; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the National Research Advisory Council will hold a meeting on Wednesday, March 4, 2020, at 1100 1st Street NE, Room 104, Washington, DC 20002. The

meeting will convene at 9:00 a.m. and end at 3:30 p.m. This meeting is open to the public.

The purpose of the National Research Advisory Council is to advise the Secretary on research development conducted by the Veterans Health Administration, including policies and programs targeting the high priority of Veterans' health care needs.

On March 4, 2019, the agenda will include ethics training, briefing from Advisory Committee Management Office (ACMO), and briefings on various VA Research programs designed to enhance the research potential for Veterans. The Committee will also explore potential recommendations to be included in the next annual report. No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Avery Rock, Designated Federal Officer, Office of Research and Development (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 461-9760, or by email at Avery.Rock@va.gov no later than close of business on February 26, 2020. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Any member of the public seeking additional information should contact Avery Rock at the above phone number or email address noted above.

Dated: January 16, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020-01000 Filed 1-21-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0253]

Agency Information Collection Activity: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 23, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0253" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421-1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter.

OMB Control Number: 2900-0253.

Type of Review: Extension of a currently approved collection.

Abstract: The standards established by the Secretary require that a lender have a qualified underwriter review all loans to be closed on an automatic basis to determine that the loan meets VA's credit underwriting standards. To determine if the lender's nominee is qualified to make such a determination, VA has developed VA Form 26-8736a which contains information that VA

considers crucial to the evaluation of the underwriter's experience. This form will be completed by the lender and the lender's nominee for underwriter and then submitted to VA for approval.

Affected Public: Individuals and households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,500.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020-00909 Filed 1-21-20; 8:45 am]

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Part II

Office of Management and Budget

2 CFR Parts 25, 170, 183, and 200

Guidance for Grants and Agreements; Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 25, 170, 183, and 200

[2019–OMB–0005]

Guidance for Grants and Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Proposed Guidance.

SUMMARY: The Office of Management and Budget is proposing to revise sections of Title 2 of the Code of Federal Regulations (CFR) Subtitle A—OMB Guidance for Grants and Agreements. The proposed revisions are limited in scope to support implementation of the President’s Management Agenda, Results-Oriented Accountability for Grants Cross-Agency Priority Goal (Grants CAP Goal) and other Administration priorities; implementation of statutory requirements and alignment of 2 CFR with other authoritative source requirements; and clarifications of existing requirements in particular areas within 2 CFR. These proposed revisions are intended to reduce recipient burden, provide guidance on implementing new statutory requirements, and improve Federal financial assistance management, transparency, and oversight.

DATES: Comments are due on or before March 23, 2020.

ADDRESSES: Comments on this proposal must be submitted electronically before the comment closing date to www.regulations.gov. In submitting comments, please search for recent submissions by OMB to find docket OMB–2019–0005, which includes the full text of the proposed revisions and submit comments there. Please provide clarity as to the section of the guidance that each comment is referencing by beginning each comment with the section number in brackets. *For example; if the comment is on 2 CFR 200.1 include the following before the comment [200.1].* The public comments received by OMB will be a matter of public record and will be posted at <http://www.regulations.gov>. Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature. To reference the track changes of the proposed revisions please visit <https://www.performance.gov/CAP/grants/>. In general, responses to the comments will be summarized and included in the preamble of the final guidance.

FOR FURTHER INFORMATION CONTACT: Nicole Waldeck or Gil Tran at the OMB Office of Federal Financial Management at 202–395–3993.

SUPPLEMENTARY INFORMATION:

Background and Objectives

In 2013, OMB partnered with the Council on Financial Assistance Reform (COFAR) to revise and streamline guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) located in Title 2 of the Code of Federal Regulations (2 CFR 200) (79 FR 78589; December 26, 2013). The intent of this effort was to simultaneously reduce administrative burden and the risk of waste, fraud, and abuse while delivering better performance on behalf of the American people. Implementation of the Uniform Guidance became effective on December 26, 2014 (79 FR 75867, December 19, 2014) and must be reviewed every five years in accordance with 2 CFR 200.109. Based on feedback and ongoing engagement with the grants management community, the current Administration established the Results-Oriented Accountability for Grants Cross Agency Priority Goal (Grants CAP Goal) in the President’s Management Agenda on March 20, 2018 (available at: <https://www.performance.gov/CAP/grants/>). The Grants CAP Goal recognizes that grants managers report spending a disproportionate amount of time using antiquated processes to monitor compliance. Efficiencies could be gained from modernization and grants managers could instead shift their time to analyze data to improve results. To address this challenge, the Grants CAP Goal Executive Steering Committee (ESC), which reports to the Chief Financial Officer’s Council (CFOC), identified four strategies to work toward maximizing the value of grant funding by developing a risk-based, data-driven framework that balances compliance requirements with demonstrating successful results for the American taxpayer.

1. Strategy 1: Standardize the Grants Management Business Process and Data
2. Strategy 2: Build Shared IT Infrastructure
3. Strategy 3: Manage Risk
4. Strategy 4: Achieve Program Goals and Objectives

To support these four strategies, various revisions are proposed for 2 CFR. In support of Strategies 1 and 2, OMB is proposing changes to terminology throughout 2 CFR. These proposed changes would help ensure

that there are no conflicts within 2 CFR and the Grants Management Federal Integrated Business Framework (available at: <https://ussm.gsa.gov/fibf/>). This effort recognizes that recipient reporting burden is reduced when the grants management business process and data elements are standardized. OMB is also proposing revisions to strengthen the governmentwide approach to performance and risk, to support efforts under Strategies 3 and 4 by encouraging agencies to measure the recipient’s performance in a way that will help Federal awarding agencies and non-Federal entities to improve program goals and objectives, share lessons learned, and spread the adoption of promising performance practices.

OMB is also proposing revisions to 2 CFR to implement relevant statutory requirements. These revisions include requirements from several National Defense Authorization Acts (NDAAs) and the Federal Funding Accountability and Transparency Act (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act).

Finally, OMB is proposing revisions to 2 CFR to clarify areas of misinterpretation. The proposed revisions are intended to reduce recipient burden by improving consistent interpretation.

OMB proposes these revisions after consultation and in collaboration with agency representatives identified by the Grants CAP Goal ESC. In addition, OMB solicited feedback from the broader Federal financial assistance community and made changes to the proposed revisions as appropriate.

In summary and as discussed further in the sections below, OMB proposes revisions to 2 CFR parts 25, 170, and 200 within the below scope. Additionally, OMB proposes adding part 183 to 2 CFR to implement Never Contract with the Enemy.

I. To support implementation of the President’s Management Agenda Results-Oriented Accountability for Grants CAP Goal and other Administration priorities;

II. To meet statutory requirements and to align with other authoritative source requirements; and

III. To clarify existing requirements.

I. Support Implementation of the President’s Management Agenda and Other Administration Priorities

A. Changes to the Procurement Standards To Better Target Areas of Greater Risk and Conform to Statutory Requirements

To better target 2 CFR requirements on areas of greater risk, and consistent

with the intent of the Grants CAP Goal, OMB proposes allowing all Federal recipients the flexibility provided in the NDAA for 2017 for institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and independent research institutes to request an increased micro-purchase threshold.

Procurement by micro-purchases was included in the final guidance published on December 26, 2013 (78 FR 78589) in response to comments provided to the proposed guidance published on February 1, 2013 (available at www.regulations.gov under docket number OMB-2013-0001). The intent of the procurement by micro-purchase guidance was to alleviate burden associated with the Uniform Guidance procurement standards, allowing for recipients to make purchases below the micro-purchase threshold without soliciting price or rate quotations, if the non-Federal entity considers the price to be reasonable. Following the publication of the final guidance, OMB received feedback from the recipient community requesting additional time to comply with the Uniform Guidance procurement standards at 2 CFR 200.317 through 200.326. In response, OMB allowed recipients a one-year grace period provided the non-Federal entity appropriately documented delayed implementation in their policies and procedures and they continued to comply with previous OMB guidance. Towards the end of this initial grace period, OMB received requests to delay implementation of the procurement standards further, specifically citing the challenges associated with implementing procurement by micro-purchase. In response, OMB allowed for an additional grace period. Following the allowance of the additional grace period, new cost-burden data was provided by the recipient community regarding the implementation of procurement by micro-purchase. This data reflected that many non-Federal entities have existing micro-purchase thresholds that are substantially higher than the micro-purchase threshold at that time of \$3,500. Recipients report that to make purchases above the micro-purchase threshold, they rely on individuals with specialized skills for their procurement offices and the final guidance would require non-Federal entities to hire additional staff at a substantial cost to non-Federal entities. Further, since finalization of 2 CFR 200, several statutes have been enacted that impact the procurement thresholds in

the current guidance as summarized below.

The NDAA for Fiscal Year (FY) 2017 (NDAA 2017) increased the micro-purchase threshold from \$3,500 to \$10,000 for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes (41 U.S.C. 1908). The NDAA 2017 also establishes an interim uniform process by which these recipients can request, and Federal awarding agencies can approve requests to apply, a higher micro-purchase threshold. Specifically, the NDAA 2017 allows a threshold above \$10,000, if approved by the head of the relevant executive agency and consistent with clean audit findings under chapter 75 of title 31, internal institutional risk assessment, or State law. The NDAA 2018 increases the micro-purchase threshold to \$10,000 for all recipients and also increases the simplified acquisition threshold from \$100,000 to \$250,000 for all recipients. A proposal to increase the micro-purchase and simplified acquisition thresholds in the Federal Acquisition Regulation (FAR) was published in the **Federal Register** on October 2, 2019 (84 FR 52420), FAR Case 2018-004. In addition, the American Innovation and Competitiveness Act of 2017 (AICA), section 207(b) requires that 2 CFR 200 be revised to conform with the requirements concerning the micro-purchase threshold.

In response to these statutory changes, OMB issued OMB Memorandum M-18-18, Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance (June 20, 2018). Consistent with the requirements of NDAA 2017, this memo outlined the process for institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and independent research institutes to request a higher micro-purchase threshold from their cognizant Federal awarding agency for indirect cost rates. The proposed changes to 2 CFR 200.319 and 200.320 incorporate the guidance available in M-18-18 and proposes to extend the flexibility to request a higher micro-purchase threshold to all non-Federal entities. Proposed changes also reflect the higher micro-purchase threshold set forth in the 2017 and the American Innovation and Competitiveness Act of 2017. The micro-purchase threshold identified in the aforementioned legislation is \$10,000.

B. Strengthening Merit Review and Notices of Funding Opportunities

OMB proposes revisions to 2 CFR 200.204 *Federal awarding agency review of merit proposals* and 2 CFR 200.203 *Notices of funding opportunities* to strengthen merit review and the notices of funding opportunities. These proposed revisions require agencies to extend their merit review process for all grants and cooperative agreements to all awards in which the Federal awarding agency has the discretion to choose the recipient. Proposed changes to 2 CFR 200.204 *Federal awarding agency review of merit proposals* also clarify the objective of the merit review process—to select recipients most likely to be successful in delivering results based on the program objectives outlined in section 2 CFR 200.202 *Program planning and design*—and thus the merit review process should be designed accordingly.

Further, Federal awarding agencies are required to systematically review Federal award selection criteria for effectiveness. These proposed changes support the Administration's priority to ensure a fair and transparent process for the selection of award recipients and supports efforts under the PMA to ensure that grants and cooperative agreements are designed to achieve program goals and objectives. OMB seeks comments on the impacts this revision will have on the financial assistance community.

C. Support for Domestic Preferences for Procurement

As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) and Executive Order 13858 of January 21, 2019 (Executive Order on Strengthening Buy-American Preferences for Infrastructure Projects), it is the policy of this Administration to maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards. In support of this policy, OMB proposes to add 2 CFR 200.321 (Domestic preferences for procurement), encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This Part will apply to procurements under a grant or cooperative agreement.

D. Promoting Free Speech

Revisions are proposed to 2 CFR 200.300 Statutory and national policy requirements, to align with Executive Orders (E.O.) 13798 “Promoting Free Speech and Religious Liberty” and E.O. 13864 “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.” These Executive Orders advise agencies on the requirements of religious liberty laws, including those laws that apply to grants and provided a policy for free inquiry at institutions receiving Federal grants. The revision to 2 CFR underscores the importance of compliance with the First Amendment.

E. Standardization of Terminology and Implementation of Standard Data Elements

OMB proposes to standardize terms across 2 CFR part 200 to support efforts under the Grants CAP Goal to standardize the grants management business process and data.

Some examples of proposed revisions include terms associated with time periods (period of performance, budget period and renewal), financial obligation, and assistance listing. The current terms used to describe time periods are inconsistently used by Federal awarding agencies. OMB proposes revisions to the definition of “period of performance” in 2 CFR part 200 to reflect that the term is the anticipated time interval between the start and end date of an initial Federal award or subsequent renewal. The intent is to clarify that the recipient may not incur obligations during the entire period of performance in instances where a Federal awarding agency incrementally funds the Federal award and funding has not been received for a subsequent budget period within the period of performance. For example, a recipient may receive a Federal award that reflects a five-year period of performance, but only received one year worth of funding as reflected in the first year budget period. The recipient may only incur costs during the first year budget period until subsequent budget periods are funded based on the availability of appropriations, satisfactory performance, and compliance with the terms and conditions of the award. The proposed change also ensures consistent use of the term for purposes of transparency reporting as required by FFATA. Further, OMB is proposing definitions for budget period and renewal to further clarify the use of time period terms throughout 2 CFR.

In addition, OMB proposes to replace the term “obligation” to either “financial obligation” or “responsibility” within the guidance as appropriate, to ensure alignment with DATA Act definitions. OMB requests comments on the anticipated impact of replacing the term “obligation” from 2 CFR part 200 to “financial obligation”; specifically, OMB asks if replacing “obligation” will help to align requirements set out in 2 CFR 200 and the DATA Act.

OMB also proposes changes across 2 CFR to ensure consistent use of terms across parts 25, 170, 180 and 200 where possible, relying on 2 CFR part 200 as the primary source. As reflected in the proposed changes, there are instances where the terms within 2 CFR cannot be made consistent. For example, the term “non-Federal entity” cannot be consistently defined across 2 CFR: parts 25 and 170 apply to Federal awards to foreign organizations, foreign public entities, and for-profit organizations, while part 200 only applies to these type of non-Federal entities when a Federal awarding agency elects for part 200 to apply. For definitions that are consistent across 2 CFR parts 25, 170 and 200, revisions have been made to parts 25 and 170 to refer definitions to part 200 as the authoritative source.

The definitions “Catalog for Federal Domestic Assistance (CFDA) number” and “CFDA program title” have been replaced with the terms “Assistance listing number” and “Assistance listing program title” to reflect the change in terminology.

OMB proposes a number of additional revisions to definitions for clarity. For example, the term management decision is revised to emphasize that it is a written determination provided by a Federal awarding agency or pass-through entity.

To promote uniform application of standard data elements in future information collection requests, OMB is also proposing revisions to 2 CFR 200.206 and 200.328 to reflect that information collection requests must adhere to the standards available from the OMB-designated standards lead. This proposed change further supports OMB Memorandum M–19–16 Centralized Mission Support Capabilities for the Federal Government, which requires that future shared service solutions must adhere to the Federal Integrated Business Framework standards (available at: <https://ussm.gsa.gov/fibf/>).

Further, OMB proposes updates throughout 2 CFR part 200 to replace the term “standard form” with “common form.” A common form is an

information collection that can be used by two or more agencies, or governmentwide, for the same purpose. A standard form is a type of common form; however, standard forms must be used by all Federal awarding agencies, which may not be appropriate for Federal financial assistance given the variety of programs. The purpose of clarifying the term “common form” within 2 CFR is to help encourage agencies to seek common data solutions, increase efficiency, and better account for the burden imposed on the public by Federal agencies. More information regarding common forms and flexibility under the Paperwork Reduction Act is available at: <https://www.whitehouse.gov/omb/information-regulatory-affairs/federal-collection-information/>.

Finally, OMB proposes to reformat the definitions section of 2 CFR part 200, subpart A—Acronyms and Definitions by removing the section numbers to facilitate future additions to this section.

F. Improving the Governmentwide Approach to Performance and Risk

The President’s Management Agenda, Results-Oriented Accountability for Grants CAP goal is working toward shifting the balance between compliance and performance while reducing burden. Agencies are encouraged to promote promising performance practices that support the achievement of program goals and objectives. Many Federal agencies are working together to innovate and develop a risk-based approach that incorporates performance to achieve results-oriented grants (where applicable). By shifting the focus to the balance between performance and compliance, agencies may have the opportunity to streamline burdensome compliance requirements for programs that demonstrate results. To support this goal, OMB proposes changes to emphasize the importance of focusing on performance to achieve program results throughout the Federal award lifecycle, starting with a proposed new section 2 CFR 200.202 *Program planning and design*. This new section formally requires practices that are already expected of Federal awarding agencies to develop a strong program design by establishing program goals, objectives, and indicators, to the extent permitted by law, before the applications are solicited. Proposed changes to 2 CFR 200.207 *Specific conditions* allow Federal awarding agencies to apply less restrictive conditions based on risk and require Federal awarding agencies to ensure that specific Federal award conditions

are consistent with the program design and include clear performance expectations of recipients. Consistent changes are proposed in 2 CFR 200.210 *Information contained in a Federal award* and 2 CFR 200.310 *Performance measurement* requiring Federal awarding agencies to provide recipients with clear performance goals, indicators, and milestones. Further, OMB proposes changes to 200.102 *Exceptions* section to emphasize that Federal awarding agencies are encouraged to request exceptions to certain provisions of 2 CFR 200 in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. OMB recognizes that Federal financial assistance program goals and their intended results will differ by type of Federal program. For example, criminal justice grant programs may focus on specific goals such as reducing crime, basic scientific research grant programs may focus on expanding knowledge, and infrastructure projects may fund building or infrastructure projects. OMB is interested in receiving public comments on existing promising performance practices that Federal awarding agencies may be able to leverage within existing and proposed flexibilities or future exceptions, and in general on how grant makers can better hold recipients accountable for results. This is of particular interest as Federal agencies implement and carry out the requirements of the *Foundations of Evidence-Based Policymaking Act of 2018*, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government.

Related to the above proposals to strengthen program planning and Federal award terms and conditions, OMB proposes changes to 200.210 *Information contained in a Federal award* and 200.339 *Termination* to strengthen the ability of the Federal awarding agency to terminate Federal awards, to the greatest extent authorized by law, when the Federal award no longer effectuates the program goals or Federal awarding agency priorities. Federal awarding agencies must clearly articulate the conditions under which a Federal award may be terminated in their applicable regulations and in the terms and conditions of Federal awards. The intent of this proposal is to ensure that Federal awarding agencies prioritize ongoing support to Federal awards that meet program goals. For

instance, following the issuance of a Federal award, if additional evidence reveals that a specific award objective is ineffective at achieving program goals, it may be in the government's interest to terminate the Federal award. Further, additional evidence may cause the Federal awarding agency to significantly question the feasibility of the intended objective of the award, such that it may be in the interest of the government to terminate the Federal award. OMB also proposes the elimination of the termination for cause provision because this term is not substantially different than the provision allowing Federal awarding agencies to terminate Federal awards when the recipient fails to comply with the terms and conditions. OMB seeks feedback on the impact of these proposed changes and whether the language meets the intended outcome of these provisions.

In addition, OMB proposes changes to the definition of fixed amount awards in 200.1 to allow Federal awarding agencies to apply the provision to both grant agreements and cooperative agreements.

The revisions in 2 CFR 200.301 emphasize that agencies are encouraged to measure recipient performance to improve program goals and objectives, share lessons learned, and spread the adoption of promising practices. While understanding that grant program goals and their intended results will differ by type of program, the Grants CAP Goal is working to shift the culture of Federal grant making from a heavy focus on compliance to a balanced approach that includes a focus on the degree to which grant programs achieve their goals and intended results.

To provide clarity and consistency among Federal awarding agencies, a revision to include program evaluation costs as an example of a direct cost under a Federal award has been included in 2 CFR 200.413 *Direct costs*. Please refer to OMB Circular A-11 200.22 for a definition on program evaluation. Evaluation costs are allowed as a direct cost in existing guidance. This language is intended to strengthen this intent and ensure that agencies are applying this consistently. Agencies are reminded that evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation. The work under the Grants CAP goal performance work group emphasizes evaluation as an important practice to understand the results achieved with Federal funding. OMB seeks comments on the impact of this revision within the guidance.

G. Eliminate References to Non-Authoritative Guidance

To support implementation of Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication) and to prohibit Federal awarding agencies from including references to non-authoritative guidance in the terms and conditions of Federal awards, OMB proposes changes to 200.210 *Information contained in Federal awards*. These proposed changes are intended reduce recipient burden and prevent Federal awarding agencies from imposing non-binding guidance on recipients that has not gone through appropriate public notice and comment.

H. Emphasis on Machine-Readable Information Format

OMB proposes clarifying the methods for collection, transmission, and storage of data in 2 CFR 200.335 to further explain and promote the collection of data in machine-readable formats. A Machine-readable format is a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost (44 U.S.C. 3502(18)). The proposal reinforces the machine-readable requirements in the *Foundations of Evidence-Based Policymaking Act of 2018* (Pub. L. 115-435) and accompanying OMB guidance, and reflects the need to continually evaluate which formats (and structures) maximize accessibility and usability for all stakeholders. Machine-readable formats will also help support the Leveraging Data as a Strategic Asset Cross-Agency Priority Goal (CAP Goal #2) and efforts under the Grants CAP Goal to Build Shared IT Infrastructure.

I. Changes to Closeout Provisions To Reduce Recipient Burden and Support GONE Act Implementation

Based on lessons learned from the implementation of 2 CFR part 200 and the Grants Oversight and New Efficiency Act (GONE Act), OMB proposes several changes to § 200.343 (Closeout) to support timely closeout, improve the accuracy of final closeout reports, and reduce burden.

OMB proposes to increase the number of days for recipients to submit closeout reports and liquidate all financial obligations from 90 days to 120 days. This proposal takes into consideration that it is challenging for pass-through entities with a large number of subawards to reconcile subawards and submit final reports to Federal awarding

agencies within 90 days. Recognizing the need for pass-through entities to receive timely reports from subrecipients to report back to Federal awarding agencies, OMB proposes to continue to require subrecipients to submit their reports to the pass-through entity within 90 days. The intent of this proposed change is to support financial reconciliation, help ease the burden associated with submitting reports for closeout, and promote improved accuracy. However, OMB recognizes that providing additional time may increase the likelihood that non-Federal entities will not submit their final closeout reports. To mitigate this risk, OMB is also proposing for Federal awarding agencies to report when a non-Federal entity does not submit final closeout reports as a failure to comply with the terms and conditions of the award to the OMB-designated integrity and performance system. Finally, OMB proposes the requirement of Federal awarding agencies to make every effort to close out Federal awards within one year after the end of the period of performance unless otherwise directed by authorizing statute. The proposed language is intended to promote timely closeout of awards, assist with reconciling closeout activities, and hold recipients accountable for submitting required closeout reports.

OMB seeks comments on the advantages and disadvantages of changes to 2 CFR 200.343 (Closeout), including feedback on the amount of burden this may reduce as well as the potential risk to Federal awarding agencies.

J. Changes to Performing the Governmentwide Audit Quality Project

Proposed revisions to 2 CFR 200.513 include a change in the date for the requirement for a governmentwide audit data quality project that must be performed once every 6 years beginning with audits submitted in 2018. This date has been changed to 2021, given the significant changes to the 2019 Compliance Supplement in support of the Grants CAP Goal.

K. Expanded Use of the De Minimus Rate

The first proposed revision to 2 CFR 200.414(f) allows the use of the de minimus rate of 10% of modified total direct costs (MTDC) to all non-Federal entities (except for those described in Appendix VII to Part 200—State and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b). Currently, the de minimus rate can only be used for non-Federal entities that have never received a

negotiated indirect cost rate. The use of the de minimus rate has reduced burden for both the non-Federal entities and the Federal agencies for preparing, reviewing and negotiating indirect cost rates. Since the publication of the final rule in 2013, both Federal agencies and non-Federal entities have advocated to expand the use of the de minimus rate for non-Federal entities that have negotiated an indirect cost rate previously, but for some circumstances, the negotiated rates have expired. The expiration may be due to breaks in Federal relationships and grant funding, or lack of resources for preparing an indirect cost proposal. This proposed change will further reduce the administrative burden for non-federal entities and Federal agencies and shift more resources toward accomplishing the program mission.

Another proposed revision adds language to 2 CFR 200.414(f) to clarify that when a non-Federal entity is using the de minimus rate for its federal grants, it is not required to provide proof of costs that are covered under that rate. The 10% de minimus rate was designed to reduce burden for small non-federal entities and the requirement to document the actual indirect costs would eliminate the benefits of using the de minimus rate. Lastly, for transparency purposes, a proposed revision adds a new subsection to 200.414(h) to require that all grantees' negotiated agreements for indirect cost rates are collected and displayed on public website. The agency responsible for this task and the public website will be designated by OMB.

II. Meeting Statutory Requirements and Aligning 2 CFR With Other Authoritative Source Requirements

A. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

OMB proposes revisions to 2 CFR to align with section 889 of the NDAA 2019. The NDAA 2019 prohibits the head of an executive agency from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems prohibited systems as identified in NDAA 2019. To implement this requirement, OMB proposes 2 CFR 200.216 Prohibition on certain telecommunication and video surveillance services or equipment, which prohibit Federal award recipients from using government funds to enter into contracts (or extend or renew

contracts) with entities that use covered telecommunications equipment or services. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services. As described in section 889 of the NDAA of 2019, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

OMB has limited data on the impact of this prohibition on Federal award recipients and contractors who use covered technology and seeks feedback on the feasibility, burden, programmatic impact, and cost associated with implementing this requirement. Commenters are encouraged to provide relevant data on the impacts of this proposed change and suggestions on how to support implementation of this prohibition.

B. Never Contract With the Enemy

To meet statutory requirements, OMB proposes adding Part 183 to 2 CFR to implement Never Contract with the Enemy, consistent with the fact that the law applies to only a small number of grants and cooperative agreements. Never Contract with the Enemy applies only to grants and cooperative agreements that exceed \$50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which

members of the Armed Forces are actively engaged in hostilities.

To implement Never Contract with the Enemy and to reflect current practice, OMB proposes requiring Federal awarding agencies to utilize the System for Award Management (SAM) Exclusions and Federal Awardee Performance and Integrity Information System (FAPIS) to ensure compliance before awarding a grant or cooperative agreement. Federal awarding agencies are prohibited from making any awards to persons or entities listed in SAM Exclusions pursuant to Never Contract with the Enemy and are required to list in FAPIS any grant or cooperative agreement terminated due to Never Contract with the Enemy as a Termination for Material Failure to Comply. The proposed revisions also require agencies to insert terms and conditions in grants and cooperative agreements regarding non-Federal entities' responsibilities to ensure no Federal award funds are provided directly or indirectly to the enemy, to terminate subawards in violation of Never Contract with the Enemy, and to allow the Federal Government access to records to ensure that no Federal award funds are provided to the enemy.

The law allows Federal awarding agencies to terminate, in whole or in part any grant, cooperative agreement, or contract that provides funds to the enemy, as defined in the NDAA for FY 2015. This statute applies to procurement as well as to grants and cooperative agreements and OMB will coordinate with the procurement community as appropriate before issuing final guidance, including the roles and responsibilities of the covered combatant command and Federal awarding agencies. With the exception of access to records, the Never Contract with Enemy provision will sunset in December 2019; however, there is a current proposal to extend these requirements. OMB anticipates that these statutory requirements may be extended, and therefore seeks comments at this time on these proposed revisions.

C. Requirement for the Federal Awardee Performance and Integrity Information System (FAPIS) To Include Information on a Non-Federal Entity's Parent, Subsidiary, or Successor Entities

To meet statutory requirements, OMB proposes revisions to 2 CFR parts 25 and 200 to implement Sec. 852 of the NDAA 2013, which requires that the Federal Awardee Performance and Integrity Information System (FAPIS) include information on a non-Federal entity's parent, subsidiary, or successor entities. OMB proposes to require

financial assistance applicants to provide information in SAM on their immediate owner and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract, grant, or cooperative agreement within the last three years. In addition, OMB proposes to require that prior to making a grant or cooperative agreement, agencies must consider all of the information in FAPIS with regard to an applicant's immediate owner or highest-level owner and predecessor, or subsidiary, if applicable. These revisions are consistent with the Federal Acquisition Regulation (FAR) final rule regarding this law published at 81 FR 11988 on March 7, 2016. OMB seeks comments and data on the following: The burden on recipients regarding the implementation of the statute, the applicability of this requirement to different types of entities (*i.e.*, states, local governments, and tribes), the alignment of these revisions with the FAR, and any deviations from the FAR change that OMB should consider.

D. Increase Transparency Through FFATA, as Amended by the DATA Act

OMB proposes several revisions to increase transparency regarding Federal spending as required by FFATA, as amended by the DATA Act, which mandates Federal agencies to report Federal appropriations received or expended by Federal agencies and non-Federal entities. OMB also proposes revisions to the reporting thresholds to further align financial assistance requirements with those of the Federal acquisition community.

To increase transparency, OMB proposes to expand the applicability of Federal financial assistance in 2 CFR part 25 and 2 CFR part 170 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans, insurance, contributions, and direct appropriations.

OMB also proposes to make changes throughout 2 CFR to make it clear that Federal agencies may receive Federal financial assistance awards. This will increase transparency for Federal awards received by Federal agencies.

To further align implementation of FFATA, as amended by DATA Act, between the Federal financial assistance and acquisition communities, OMB proposes revisions to Federal awarding agency and pass-through entity reporting thresholds. For Federal awarding agencies, OMB proposes revisions to 2 CFR part 170 to require agencies to report Federal awards that equal or exceed the micro-purchase

threshold as set by the FAR at 48 CFR subpart 2.1. Consistent with the FAR threshold for subcontract reporting, OMB is proposing to raise the reporting threshold for subawards that equal or exceed \$30,000. OMB seeks comments that includes an analysis on the advantages and disadvantages of raising this threshold.

OMB also proposes revisions to 2 CFR part 25 to allow agencies the flexibility to exempt a foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States valued at less than \$100,000. Currently, Federal awarding agencies have the flexibility to exempt this requirement for awards valued at less than \$25,000. Federal awarding agencies may exempt the registration requirement up to \$100,000 in cases where the agency has conducted a risk-based analysis and deems it impractical for the entity to comply with the requirements(s). OMB proposes this revision after receiving feedback from the international community that requiring certain foreign entities to register in SAM introduces substantial burden with no significant value for the Federal awarding agency. Federal awarding agencies will remain responsible for reporting these awards for transparency purposes. Recognizing the benefits of SAM registration, OMB is interested in feedback in support or against the proposal to raise the threshold.

Finally, OMB proposes requiring Federal awarding agencies to associate Financial Assistance Listings with the authorizing statute to make listings more consistent. This supports implementation of the DATA Act which requires agencies to report award level Financial Assistance Listings information for display on www.usaspending.gov.

OMB seeks comments on whether the proposed revisions increase transparency regarding Federal spending and support implementation of the DATA Act.

E. Aligning 2 CFR With Authoritative Sources

OMB proposes a revision to 2 CFR 200.431 Compensation—fringe benefits to allow states to conform with Generally Accepted Accounting Principles (GAAP), specifically Governmental Accounting Standards Board (GASB) Statement 68, and to continue to claim pension costs that are both actual and funded. OMB proposes this revision because GASB issued Statement 68, *Accounting and Financial Reporting for Pensions* which amends GASB Statement 27 and allows non-

Federal entities (NFE) to claim only estimated pension costs in their financial statements. OMB's revision will allow non-Federal entities to continue to claim pension costs that are both actual and funded.

OMB also proposes a revision to the definitions of 2 CFR 200.12 Capital assets, 2 CFR 200.59 Intangible property, 2 CFR 200.449.

The definition for "Improper Payment" has been revised to refer to the authoritative source for clarity, OMB Circular A-123—Management's Responsibility for Internal Control in Federal Agencies, Appendix C—Requirements for Payment Integrity Improvement. In addition, both the "Improper Payment" and "Questioned Cost" definitions have been revised to clarify that questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123, Appendix C.

III. Clarifying Requirements Regarding Areas of Misinterpretation

Following the publication of the Uniform Guidance, OMB received a substantial amount of questions from stakeholders requesting clarifications about key aspects of the guidance. In other instances, it has come to OMB's attention that the interpretation of certain provisions was not consistent with the intent of the Uniform Guidance. In response, OMB proposes a number of clarifications that are aimed at reducing recipient administration burden and ensuring consistent interpretation of guidance.

A. Responsibilities of the Pass-Through Entity To Address Only a Subrecipient's Audit Findings Related to Their Subaward

To clarify requirements regarding responsibility for audit findings, OMB proposes a revision to 2 CFR 200.331 *Requirements for pass-through entities* to clarify that pass-through entities (PTE) are responsible for addressing only a subrecipient's audit findings that are specifically related to their subaward. For example, a PTE is not required to address all of the subrecipient's audit findings. In addition, the PTE may rely on the subrecipient's auditors and cognizant agency's oversight for routine audit follow-up and management decisions. These changes reduce the burden for PTEs by allowing a PTE to rely on the cognizant agency to address a subrecipient's entity-wide issues.

B. Reducing Burden on Universities by Clarifying Timing of the Disclosure Statement

OMB also proposes to clarify the timing of submission of the disclosure statement (DS-2), which is only required for universities that meet certain thresholds as defined in 48 CFR 9903.202-1(f). This revision reduces burden for universities while maintaining the requirement for universities to implement policies in compliance with 2 CFR. OMB seeks comments on whether the proposed revisions clarify 2 CFR requirements and reduce burden for PTEs and universities.

C. Response to Frequently Asked Questions Related to the Prior Release of 2 CFR

In July 2017, OMB developed and posted Frequently Asked Questions (FAQs) on the Chief Financial Officers Council website in response to stakeholder requests for clarification on the first publication of 2 CFR (<https://cfo.gov/wp-content/uploads/2017/08/July2017-UniformGuidanceFrequentlyAskedQuestions.pdf>). Due to the volume of questions related to these topics, OMB proposes clarifying the following: The meaning of the words "must" and "may" as they pertain to requirements; the effective date of 2 CFR; applicability and documentation requirements when a non-Federal entity elects to charge the de minimus indirect cost rate of modified total direct costs (MTDC); pass-through entity responsibilities related to indirect cost rates and audits; and applicability of 2 CFR to FAR based contracts. These proposed revisions are intended to improve clarity and reduce recipient burden by providing guidance on implementing 2 CFR.

D. Applicability of Guidance to Federal Agencies

OMB proposes changes to 2 CFR 200.101 (Applicability) to clarify that Federal awarding agencies may apply the requirements of 2 CFR 200 to other Federal agencies, to the extent permitted by law. This proposed change recognizes that there are instances when Federal awarding agencies or pass-through entities have the authority to issue Federal awards to Federal agencies and in these instances, the provisions of 2 CFR 200 may be applied, as appropriate. This proposed change is consistent with how for-profit entities, foreign public entities, or foreign organizations are treated in the Uniform Guidance.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The revision of 2 CFR is not a regulatory action and therefore it is not subject to the 12866 review by OIRA.

Regulatory Flexibilities Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, requires that an agency provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. OMB does not expect this guidance to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. There are some proposed revisions that may impose burden, however, there are more proposed revisions that reduce burden to small entities. When reviewing all proposed revisions, the burden that will be reduced for recipients is much greater than the burden imposed.

OMB's proposal to expand the applicability of Federal financial assistance in 2 CFR part 25 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans and insurance will impact small entities, but it will not have a significant impact on a substantial number of small entities. Currently, 2 CFR part 25 requires all non-Federal entities that apply for grants and cooperative agreements to register in the System for Award Management (SAM). OMB proposes to require all entities that apply for Federal financial assistance such as loans and insurance to register in SAM, which requires the establishment of a unique entity identifier. In practice, some Federal awarding agencies already require SAM registration for all types of Federal financial assistance and the proposed change would make this practice consistent among agencies. As noted in the Paperwork Reduction Act section, as of June 20, 2019, there were 159,477 unique Federal financial assistance registrants in the System for Awards Management (SAM). According to data accessed from www.usaspending.gov, in FY 2018, approximately 2,952 small businesses who received awards for other types of

financial assistance did not have a unique entity identifier. Assuming that non-Federal entities with a unique entity identifier reported to www.usaspending.gov are already registered in SAM, this change will impact approximately 2,952 small entities annually. SAM registration is estimated to take two and a half hours per response, which results in 7,380 burden hours annually. Individuals who receive Federal financial assistance as a natural person remain exempt from this requirement. This change is proposed to successfully implement FFATA, as amended by the DATA Act. There is no exemption from the guidance for small entities, because the law does not provide for any such exemption. Recognizing that there are limitations to relying on www.usaspending.gov data to estimate the impact of this change on small entities, OMB requests comments on how burdensome this proposed requirement may be for small entities.

The proposed guidance also clarifies requirements regarding pass-through entities' responsibility for sub-award audit findings and clarifies the timing of a disclosure statement which is only required for universities that meet certain thresholds. These proposed changes are intended to reduce burden and will not have a significant economic impact on a substantial number of small entities because they clarify existing requirements; they do not include any new requirements for non-Federal entities.

OMB proposes to add a provision to 2 CFR part 200 Subpart D—Post Federal Award Requirements, 2 CFR 200.321 (Domestic preferences for procurement), encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This revision was added in response to Executive Order 13788 of April 18, 2017 (Buy American and Hire American) and Executive Order 13858 of January 21, 2019 (Executive Order on Strengthening Buy-American Preferences for Infrastructure Projects). This may impose burden on small entities that primarily procure goods and services produced outside the U.S.

The proposed guidance also provides consistency among definitions and terms and proposes several provisions to increase transparency regarding Federal spending. These proposed changes are intended to reduce recipient burden and not have a significant economic impact on a substantial number of small entities because they will affect Federal awarding agencies;

they do not include any new requirements for non-Federal entities.

The proposed guidance introduces a new provision to align with section 889 of the NDAA 2019, Prohibition on certain telecommunication and video surveillance services or equipment. This statutory requirement may introduce burden to small entities that are prohibited from obligating or expending grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter in a contract with, as identified in the NDAA 2019.

This proposed guidance implements a new statute that requires applicants of Federal assistance to provide information on their owner, predecessor and subsidiary, including the Commercial and Government Entity (CAGE) Code and name of all predecessors, if applicable. This will not have a significant economic impact on a substantial number of small entities because small entities typically do not have a complex corporate structure requiring them to report information on their owner, predecessor, and subsidiary. Further, the burden is minimal for a non-Federal entity to provide the name of its immediate owner and highest-level owner.

The proposed guidance also implements a statute, Never Contract with the Enemy, which will not have a significant economic impact on a substantial number of small entities because it will affect only a small number of grants and cooperative agreements. Never Contract with the Enemy applies only to grants and cooperative agreements that exceed \$50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

The NDAA for FY2018 increased the micro-purchase threshold from \$3,500 to \$10,000 and increased the simplified acquisition threshold from \$100,000 to \$250,000 for all recipients. OMB's proposed revisions reduces burden and will not have a significant economic impact on a substantial number of small entities because it is likely to reduce burden for all non-Federal entities.

Paperwork Reduction Act

Consistent with the Regulatory Flexibility Act analysis discussion, the Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed guidance contains information collection requirements and will impact the current Information Collection

Requests approved under OMB control number 3090–0290 managed by the General Services Administration. Accordingly, the Regulatory Secretariat Division of GSA will submit a request for approval to amend the existing Information Collection Requests for System for Award Management (SAM) registration requirements for prime Federal financial assistance recipients.

Annual Reporting Burden: The estimated annual reporting burden includes all possible entities for Federal financial assistance that may be required to register in SAM. The estimated annual reporting burden also includes entities that receive Federal financial assistance reported in *USASpending.gov* and either may or may not be required to register in SAM.

The current guidance only requires that prime applicants and recipients of Federal financial assistance in the form of grants register in SAM. Pursuant to 2 CFR Subtitle A, Chapter I, and Part 25 (75 FR 5672), prime applicants and recipients are required to maintain accurate SAM registration accounts with current information at all times during which they have an active Federal award, an application, or a plan under consideration by a Federal awarding agency.

The burden estimates are approximations based on the best available data.

As of July 7, 2019, there were 159,477 unique Federal financial assistance registrants in SAM. However, it is important to note that not all registrants in SAM ultimately apply for, or receive, Federal financial assistance. To develop a more accurate estimate for the total number of Federal financial assistance recipients, including loans and other types of Federal financial assistance, OMB used data from SAM combined with data from *USASpending.gov* on non-grant recipients of Federal financial assistance to determine the anticipated number of registrants for Federal financial assistance in SAM.

The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252) established the requirement to create *USASpending.gov*. *USASpending.gov* is a single, searchable website, accessible by the public that hosts financial data on both Federal financial assistance and contracts. Recipients of all types of Federal financial assistance, including loans, submit their financial data to their Federal awarding agency. Federal awarding agencies are then responsible for accurately submitting recipient financial data to *USASpending.gov*. OMB ran reports in *USASpending.gov*

to identify the number of unique Federal financial assistance recipients that receive Federal financial assistance other than grants to isolate the total number of potential registrants that may be expected to register in SAM as a result of the updates to the proposed guidance.

To account for the number of loan and other types of Federal financial assistance recipients that do not also receive grants, OMB removed duplicate recipients based on recipient Data Universal Numbering System Number (DUNS) numbers, from Dun & Bradstreet (D&B). At this time all Federal financial assistance recipients are required to register for DUNS numbers; however, DUNS numbers will be phased out as the primary key to identify every entity record by 2020 in place of a non-proprietary, SAM-generated, Unique Entity ID (UEI) number.

As of June 30, 2019 there were 41,795 grant, 122 loan, and 12,485 other Federal financial assistance recipients with unique DUNS numbers reported in *USASpending.gov*. Therefore, based on the number of entities with unique DUNS numbers that are registered in SAM (159,477), plus entities that receive loans (122) or other Federal financial assistance (12,485) reported in *USASpending.gov* that may not be reflected in SAM, the total number of entities that may be impacted by the proposed guidance associated Information Collection Requests under OMB control number 3090–0290 could be 172,084 registrants.

Public reporting burden for Information Collection Requests under OMB control number 3090–0290 is managed by the General Services Administration and estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 172,084.

Responses per Respondent: 1.

Total Annual Responses: 172,084.

Hours per Response: 2.5.

Total Response Burden Hours: 430,210.

The proposed guidance also requires that registrants for Federal financial assistance provide information on their owner, predecessor, and subsidiary, including the Commercial and Government Entity (CAGE) Code and name of all predecessors, if applicable. This information is required to implement Sec. 852 of the NDAA of FY 2013, which requires that the Federal

Awardee Performance and Integrity Information System (FAPIIS) include information on a non-Federal entity's parent, subsidiary, or successor entities. Non-Federal entities are already required to obtain a CAGE code for purposes of SAM registration. It is anticipated that including this information as part of SAM registration or for a renewal should not result in significant additional time. Public reporting burden for this collection of information is estimated to average .1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Based on the burden estimates for the total number of SAM registrants indicated in the previous section, the annual reporting burden for this proposal is estimated as follows:

Respondents: 172,084.

Responses per respondent: 1.

Total annual responses: 172,084.

Preparation hours per response: .1.

Total response burden hours: 17,208.

The number of respondents estimated in this section is based on the best available data from SAM and *USASpending.gov*. It is important to note that not all registrants in SAM complete applications for Federal financial assistance. Based on the financial data from *USASpending.gov*, less than one third of registrants in SAM receive Federal financial assistance. Therefore, the actual number of respondents and the relative burden may be significantly lower than the estimated amounts.

Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than March 23, 2020.

Submit comments identified by “Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients” by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0290 Docket No. 2019–0005. Select the link “Comment Now” that corresponds with “Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “Information Collection 3090–0290, System for Award Management

Registration Requirements for Prime Grant Recipients” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0290.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the System for Award Management Registration Requirements for Prime Financial Assistance Recipients, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (MVCB), Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients, in all correspondence.

List of Subjects

2 CFR Part 25

Administrative practice and procedure; Grant programs; Grants administration; Loan programs.

2 CFR Part 170

Colleges and universities; Grant programs; Hospitals; International organizations; Loan programs; Reporting and recordkeeping requirements.

2 CFR Part 183

Foreign aid; Grants administration; Grant programs; International organizations; Reporting and recordkeeping requirements.

2 CFR Part 200

Accounting; Colleges and universities; Grants administration; Grant programs; Hospitals; Indians; Nonprofit organizations; Reporting and recordkeeping requirements; State and local governments.

Timothy F. Soltis,
Deputy Controller.

For the reasons stated in the preamble, the Office of Management and Budget proposes to amend 2 CFR parts

25, 170, 200 and add part 183 as set forth below:

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

■ 1. The authority citation for part 25 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 2. Amend § 25.100 by revising the introductory text to read as follows:

§ 25.100 Purposes of this part.

This part provides guidance to recipients to establish:

* * * * *

■ 3. Revise § 25.105 to read as follows:

§ 25.105 Types of awards to which this part applies.

This part applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in § 25.306.

■ 4. Revise § 25.110 to read as follows:

§ 25.110 Types of recipient and subrecipient entities to which this part applies.

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to all Federal agencies and non-Federal entities, other than those exempted by statute or exempted in paragraphs (b), and (c) of this section, that—

(1) Apply for or receive Federal awards; or

(2) Receive subawards directly from recipients of those Federal awards.

(b) *Exemptions for individuals.* None of the requirements in this part apply to an individual who applies for or receives Federal financial assistance as a natural person (*i.e.*, unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(c) *Other exemptions required by law (e.g. statutory).* (1) Under a condition identified in paragraph (c)(2) of this section, a Federal awarding agency may exempt a non-Federal entity or Federal agency from an applicable requirement to obtain a unique entity identifier, register in the SAM, or both.

(i) In that case, the Federal awarding agency must use a generic unique entity identifier in data it reports to *USASpending.gov* if reporting for a prime award to the non-Federal entity or Federal agency is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as “Transparency Act”).

(ii) Federal awarding agency use of a generic unique entity identifier should be used rarely for prime award reporting because it prevents prime awardees from being able to fulfill the subaward or executive compensation reporting required by the Transparency Act.

(2) The conditions under which a Federal awarding agency may exempt a non-Federal entity are—

(i) For any non-Federal entity or Federal agency, if the Federal awarding agency determines that it must protect information about the entity from disclosure if it is in the national security or foreign policy interests of the United States, or to avoid jeopardizing the personal safety of the Federal agency or non-Federal entity's staff or clients.

(ii) For a foreign organization or foreign public entity applying for or receiving a Federal award or subaward for a project or program performed outside the United States valued at less than \$100,000, if the Federal awarding agency deems it to be impractical for the entity to comply with the requirement(s). This exemption must be determined by the Federal awarding agency on a case-by-case basis while utilizing a risk-based approach and does not apply if subawards are anticipated.

(3) Federal awarding agencies' use of generic unique entity identifier, as described in paragraphs (c)(1) and (2) of this section, should be rare. Having a generic unique entity identifier limits a recipient's ability to use Governmentwide systems that are needed to comply with some reporting requirements.

■ 5. Revise § 25.200 to read as follows:

§ 25.200 Requirements for notice of funding opportunities, regulations, and application instructions.

(a) Each Federal awarding agency that awards the types of Federal financial assistance defined in § 25.306 must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued either on or after the effective date of this part; or

(b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity and Federal agency that applies and does not have an exemption under § 25.110 to:

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

(2) Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all

predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, as defined in the FAR (52 part 204–20), at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and

(3) Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency.

(c) For purposes of this policy:

(1) The applicant is the non-Federal entity or Federal agency that meets the Federal awarding agency's eligibility criteria and has the legal authority to apply and to receive the Federal award. For example, if a consortium applies for a Federal award to be made to the consortium as the recipient, the consortium must have a unique entity identifier. If a consortium is eligible to receive funding under a Federal awarding agency program but the Federal awarding agency's policy is to make the Federal award to a lead entity for the consortium, the unique entity identifier of the lead non-Federal entity will be used.

(2) A “notice of funding opportunity” is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term.

(3) To remain registered in the SAM database after the initial registration, the applicant is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete.

■ 6. Revise § 25.205 to read as follows:

§ 25.205 Effect of noncompliance with a requirement to obtain a unique entity identifier or register in the SAM.

(a) A Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to a non-Federal entity or Federal agency until the non-Federal entity or Federal agency has complied with the requirements described in § 25.200 to provide a valid unique entity identifier and maintain an active SAM registration with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110).

(b) At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity

identifier or maintain an active SAM registration with current information, the Federal awarding agency:

(1) May determine that the applicant is not qualified to receive a Federal award; and

(2) May use that determination as a basis for making a Federal award to another applicant.

■ 7. Revise § 25.210 to read as follows:

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal awarding agency may add a unique entity identifier field to information collections previously approved by OMB, without having to obtain further approval to add the field.

■ 8. Revise § 25.215 to read as follows:

§ 25.215 Requirements for agency information systems.

Each Federal awarding agency that awards Federal financial assistance (as defined in § 25.306) must ensure that systems processing information related to the Federal awards, and other systems as appropriate, are able to accept and use the unique entity identifier as the universal identifier for financial assistance applicants and recipients.

■ 9. Revise § 25.220 to read as follows:

§ 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, a Federal agency must include in each Federal award (as defined in § 25.305) the award term in appendix A to this part.

(b) A Federal awarding agency may use different letters and numbers than those in appendix A to this part to designate the paragraphs of the Federal award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the Federal awarding agency's Federal awards.

■ 10. Revise § 25.300 to read as follows:

§ 25.300 Federal awarding agency.

Federal awarding agency has the meaning given in 2 CFR 200.1.

■ 11. Revise § 25.305 to read as follows:

§ 25.305 Federal award.

Federal award, for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity or Federal agency receives directly from a Federal awarding agency.

■ 12. Add § 25.306 to subpart C to read as follows:

§ 25.306 Federal financial assistance.

(a) *Federal financial assistance* has the meaning given in 2 CFR 200.1 and

also includes assessed or voluntary contributions, for purposes of this part.

(b) *Federal financial assistance*, for purposes of this part, does not include:

(1) Technical assistance, which provides services in lieu of money; and

(2) A transfer of title to the Federally-owned property provided in lieu of money, even if the Federal award is called a grant.

■ 13. Amend § 25.310 by revising the section heading to read as follows:

§ 25.310 System for Award Management.

§ 25.320 [Removed]

■ 14. Remove § 25.320.

■ 15. Revise § 25.330 to read as follows:

§ 25.330 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

■ 16. Add § 25.331 to subpart C to read as follows:

§ 25.331 Foreign public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

■ 17. Add § 25.333 to subpart C to read as follows:

§ 25.333 Highest level owner.

Highest level owner has the meaning given in 2 CFR 200.1.

■ 18. Revise § 25.335 to read as follows:

§ 25.335 Indian Tribe (or "Federally recognized Indian Tribe").

Indian Tribe (or "*Federally recognized Indian Tribe*") has the meaning given in 2 CFR 200.1.

■ 19. Revise § 25.340 to read as follows:

§ 25.340 Local government.

Local government has the meaning given in 2 CFR 200.1.

■ 20. Add § 25.343 to subpart C to read as follows:

§ 25.343 Non-Federal entity.

Non-Federal Entity, as it is used in this part, has the meaning given in paragraph C.3 of the award term in Appendix A to this part.

■ 21. Revise § 25.345 to read as follows:

§ 25.345 Nonprofit organization.

Nonprofit organization has the meaning given in § 200.1.

■ 22. Add § 25.347 to subpart C to read as follows:

§ 25.347 Predecessor.

Predecessor means a non-Federal entity that is replaced by a successor.

■ 23. Revise § 25.350 to read as follows:

§ 25.350 State.

State has the meaning given in 2 CFR 200.1.

■ 24. Revise § 25.355 to read as follows:

§ 25.355 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

■ 25. Add § 25.357 to subpart C to read as follows:

§ 25.357 Successor.

Successor means a non-Federal entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term "successor" does not include new offices or divisions of the same company or a company that only changes its name.

■ 26. Revise § 25.360 to read as follows:

§ 25.360 Subrecipient.

Subrecipient has the meaning given in 2 CFR 200.1.

■ 27. Add § 25.362 to subpart C to read as follows:

§ 25.362 Subsidiary.

Subsidiary has the meaning given in 2 CFR 200.1.

■ 28. Revise Appendix A to Part 25 to read as follows:

Appendix A to Part 25—Award Term

I. System for Award Management and Universal Identifier Requirements

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or grant within the last three years, if applicable as defined in the FAR (9 CFR part 104–6), until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier

If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no non-Federal entity (*see* definition in paragraph C of this award term) or Federal agency may receive a subaward from you until the non-Federal entity or Federal agency has provided its Unique Entity Identifier to you.

2. May not make a subaward to a non-Federal entity or Federal agency until the non-Federal entity or Federal agency has provided its Unique Entity Identifier to you.

C. Definitions

For purposes of this term:

1. *System for Award Management (SAM)* means the Federal repository into which a

non-Federal entity or Federal agency must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).

2. *Unique Entity Identifier* means the identifier required for SAM registration to uniquely identify business entities.

3. *Non-Federal entity* has meaning given in 2 CFR 200.1 and also includes all of the following, for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity; and
- c. A domestic for-profit organization.

4. *Subaward* has the meaning given in 2 CFR 200.1.

5. *Subrecipient* has the meaning given in 2 CFR 200.1.

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

■ 29. The authority citation for part 170 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 30. Revise § 170.100 to read as follows:

§ 170.100 Purposes of this part.

This part provides guidance to Federal awarding agencies on reporting Federal awards to establish requirements for recipients' reporting of information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act”.

■ 31. Revise § 170.105 to read as follows:

§ 170.105 Types of awards to which this part applies.

This part applies to a Federal awarding agency's grants, cooperative agreements, loans, and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

■ 32. Revise § 170.110 by revising paragraphs (a) and (b)(1), paragraph (b)(2) introductory text, and paragraph (b)(3) to read as follows:

§ 170.110 Types of entities to which this part applies.

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to all non-Federal entities and Federal agencies, other than those exempted by law or excepted in paragraph (b) of this section, that—

(1) Apply for or receive Federal awards; or

(2) Receive subawards under Federal awards.

(b) * * * (1) None of the requirements in this part apply to an individual who applies for or receives a Federal award as a natural person (*i.e.*, unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(2) None of the requirements regarding reporting names and total compensation of a non-Federal entity's five most highly compensated executives apply unless in the non-Federal entity's preceding fiscal year, it received—

* * * * *

(3) The public does not have access to information about the compensation of senior executives, unless otherwise publically available, through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

■ 33. Revise § 170.200 to read as follows:

§ 170.200 Federal awarding agency reporting requirements.

(a) Federal awarding agencies are required to publically report Federal awards that equal or exceed the micro-purchase threshold and publish the required information on a public-facing, OMB-designated, governmentwide website and follow other relevant OMB guidance to support Transparency Act implementation.

(b) Federal awarding agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

■ 34. Add § 170.210 to subpart B to read as follows:

§ 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.

(a) Each Federal awarding agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants and is issued on or after the effective date of this part.

(b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity that

applies and for Federal financial assistance and that does not have an exception under § 170.110(b) to ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.

■ 35. Revise § 170.220 to read as follows:

§ 170.220 Award term.

(a) To accomplish the purposes described in § 170.100, a Federal awarding agency must include the award term in Appendix A to this part in each Federal award to a non-Federal entity and Federal agency under which the total funding is anticipated to equal or exceed \$30,000 in Federal funding.

(b) A Federal awarding agency, consistent with paragraph (a) of this section, is not required to include the award term in Appendix A to this part if it determines there is no possibility that the total amount of Federal funding under the Federal award will equal or exceed \$30,000. However, the Federal awarding agency must subsequently modify the award to add the award term if changes in circumstances increase the total Federal funding under the award is anticipated to equal or exceed \$30,000 during the period of performance.

■ 36. Revise § 170.300 to read as follows:

§ 170.300 Federal awarding agency.

Federal awarding agency has the meaning given in 2 CFR 200.1.

■ 37. Revise § 170.305 to read as follows:

§ 170.305 Federal award.

Federal award, for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity or Federal agency receives directly from a Federal awarding agency.

■ 38. Add § 170.307 to subpart C to read as follows:

§ 170.307 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

■ 39. Add § 170.308 to subpart C to read as follows:

§ 170.308 Federal public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

■ 40. Revise § 170.310 to read as follows:

§ 170.310 Non-Federal entity.

Non-Federal entity has the meaning given in 2 CFR 200.1 and also includes all of the following, for purposes of this part:

(a) A foreign organization;

(b) A foreign public entity; and
(c) A domestic or foreign for-profit organization.

■ 41. Revise § 170.320 to read as follows:

§ 170.320 Federal financial assistance subject to the Transparency Act.

Federal financial assistance subject to the Transparency Act has the meaning given in 2 CFR 200.1. Federal financial assistance, for purposes of this part, does not include—

(a) Technical assistance, which provides services in lieu of money;

(b) A transfer of title to Federally owned property provided in lieu of money, even if the award is called a grant;

(c) Any classified award; or

(d) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

■ 42. Revise § 170.325 to read as follows:

§ 170.325 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

■ 43. Amend Appendix A to part 179 by revising paragraphs (a)(1), paragraph (b) introductory text, paragraphs (b)(1)(i), paragraph (b)(1)(ii) introductory text, (b)(1)(iii), paragraph (c)(1) introductory text, paragraph (c)(1)(ii), paragraph (e)(1) introductory text, paragraph (e)(1)(iii), (e)(3)(ii), and (e)(4) and removing (e)(1)(v) to read as follows:

Appendix A to Part 170—Award Term

(I) * * *

(a) * * *

(1) *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

* * * * *

(b) *Reporting total compensation of recipient executives for non-Federal entities.*

(1) * * *

(i) The total Federal funding authorized to date under this Federal award that equals or exceeds \$30,000 as defined in 2 CFR 170.322;

(ii) In the preceding fiscal year, you received—

* * * * *

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the

public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execcomp.htm>.)

* * * * *

(c) * * *

(1) *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient’s five most highly compensated executives for the subrecipient’s preceding completed fiscal year, if—

* * * * *

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execcomp.htm>.)

* * * * *

(e) * * *

(1) Non-Federal entity means all of the following as defined in 2 CFR part 25:

* * * * *

(iii) A domestic or foreign nonprofit organization; and

(iv) A domestic or foreign for-profit organization

* * * * *

(3) * * *

(ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).

* * * * *

(4) *Subrecipient* means a non-Federal entity or Federal agency that:

* * * * *

■ 44. Add part 183 to read as follows:

PART 183—NEVER CONTRACT WITH THE ENEMY

Sec.

183.5 Purpose of this part.

183.10 Applicability.

183.15 Responsibilities of Federal awarding agencies.

183.20 Reporting responsibilities of Federal Awarding Agencies.

183.25 Responsibilities of non-Federal entities.

183.30 Access to records.

183.35 Definitions.

Appendix to Part 183—Clauses for Award Agreements

Authority: Pub. L. 113–291.

§ 183.5 Purpose of this part.

This part provides Office of Management and Budget (OMB) guidance for Federal awarding agencies on applying Never Contract with the

Enemy to grants and cooperative agreements, as required by subtitle E, title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291).

§ 183.10 Applicability.

(a) Part 183 applies only to grants and cooperative agreements that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of part 183 are applicable until December 31, 2019, except for Access to Records which has no sunset date.

§ 183.15 Responsibilities of Federal awarding agencies.

(a) Prior to making an award for a covered grant or cooperative agreement that meets the thresholds in § 183.10 for Never Contract with the Enemy, the Federal awarding agency must check the current list of prohibited or restricted persons or entities in the System Award Management (SAM) Exclusions. If a person or entity is on the current list of prohibited or restricted persons or entities in SAM Exclusions pursuant to Never Contract with the Enemy, the agency must not make an award.

(b) The Federal awarding agency must include a clause in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy (see Appendix A of this part).

(c) A Federal awarding agency may become aware of a person or entity that:

(1) Provides funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency directly or indirectly to persons or entities that are actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities; or

(2) Fails to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency are provided directly or indirectly to persons or entities that are actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(d) When a Federal awarding agency becomes aware of such a person or

entity, it may do any of the following actions:

(1) Restrict the future award of all Federal grants and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide grant funds directly or indirectly to a covered person or entity.

(2) Terminate any grant or cooperative agreement upon becoming aware that the non-Federal recipient has failed to exercise due diligence to ensure that none of the award funds are provided directly or indirectly to a covered person or entity.

(e) The Federal awarding agency must notify non-Federal entities in writing regarding its decision to restrict all future awards and/or to terminate a grant. The agency must also notify the non-Federal entity in writing about the non-Federal entity's right to request an administrative review (using the agency's procedures) of the restriction or termination of the grant or cooperative agreement within 30 days of receiving notification.

§ 183.20 Reporting responsibilities of Federal awarding agencies.

(a) If a Federal awarding agency restricts all future awards to a covered person or entity in accordance with Never Contract with the Enemy, it must enter information on the ineligible person or entity into SAM Exclusions as a prohibited or restricted source pursuant to Subtitle E, Title VIII of the NDAA for FY 2015 (Pub. L. 113–291).

(b) When a Federal awarding agency terminates a grant or cooperative agreement due to Never Contract with the Enemy, it must report the termination as a Termination for Material Failure to Comply in the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)).

(c) The Federal awarding agency must report in writing any action to restrict all future awards or to terminate the award. The Federal awarding agency must also report in writing any decision not to restrict all future awards or terminate an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source pursuant to Subtitle E Title VIII of the NDAA for FY 2015 (Pub. L. 113–291). The Federal awarding agency shall submit these reports to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned

(or specific deputies). See section 843(4) of the NDAA for FY 2015 for definition of covered combatant command: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>. See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>.

(d) For each instance in which an executive agency exercised the authority to restrict all future awards or to terminate, or a grant or cooperative agreement, the agency must report in writing the following to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies). See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>:

(1) The executive agency taking such action.

(2) An explanation of the basis for the action taken.

(3) The value of the grant or cooperative agreement terminated.

(4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated.

(e) For each instance in which the Federal awarding agency did not exercise the authority to terminate or restrict a grant or cooperative agreement after becoming aware that a person or entity is a prohibited or restricted source pursuant to Subtitle E Title VIII of the NDAA for FY 2015 (Pub. L. 113–291), the Federal awarding agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following. (See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>):

(1) The executive agency concerned.

(2) An explanation of the basis for not taking the action.

(f) For each instance in which an executive agency exercised the additional authority to examine grantee and subaward records, the agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following (See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>):

[imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf](https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf)):

(1) An explanation of the basis for the action taken; and

(2) A summary of the results of any examination of records.

§ 183.25 Responsibilities of non-Federal entities.

Non-Federal entities must include two clauses in all covered subawards in accordance with Never Contract with the Enemy (see appendix to this Part).

§ 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.30) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal awarding agency may only exercise this authority upon a written determination by the Federal awarding agency that relies on a finding by the commander of a covered combatant command that there is reason to believe that funds, including supplies and services, received under the grant or cooperative agreement may have been provided directly or indirectly to a covered person or entity.

§ 183.35 Definitions.

Terms used in this part are defined as follows:

Contingency operation, as defined in 10 U.S.C. 101a, means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301a, 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 712 or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered combatant command means the following:

(1) The United States Africa Command

(2) The United States Central Command

(3) The United States European Command

- (4) The United States Pacific Command
 (5) The United States Southern Command
 (6) The United States Transportation Command.

Covered grant, cooperative agreement means a grant or cooperative agreement, as defined in 2 CFR 200.1 with an estimated value in excess of \$50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. Except for U.S. Department of Defense grants and cooperative agreements that were awarded on or before December 19, 2017 that will be performed in the United States Central Command, where the estimated value is in excess of \$100,000.

Covered person or entity means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

Appendix to Part 183—Clauses for Award Agreements

Federal awarding agencies must include the following two clauses in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

Clause 1:

Prohibition on Providing Funds to the Enemy

- (a) The non-Federal Entity must—
- (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities;
 - (2) Check the list of prohibited/restricted sources in the System for Award Management (SAM) at www.sam.gov—
 - (i) Prior to issuing a subaward or contract; and
 - (ii) At least on a monthly basis; and
 - (3) Terminate in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

(4) Include the substance of this clause, including this paragraph (a), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

(b) The Federal awarding agency has the authority to terminate this grant or

cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the grantee failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of clause)

Clause 2:

Additional Access to Non-Federal Entity Records

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the non-Federal entity and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 45. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

■ 46. Amend § 200.0 by adding in alphabetical order the acronym NFE and revising the existing acronym SAM.

§ 200.0 Acronyms.

| | | | | |
|-----|-----------------------------|---|---|---|
| * | * | * | * | * |
| NFE | Non-Federal Entity | | | |
| * | * | * | * | * |
| SAM | System for Award Management | | | |
| * | * | * | * | * |

■ 47. Revise § 200.1 to read as follows:

§ 200.1 Definitions

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional

instructional information provided in governmentwide standard information collections.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance listings refers to the publically available listing of Federal assistance programs managed and administered by the General Services Administration. Formally known as the Catalog of Federal Domestic Assistance (CFDA).

Assistance listing number means a unique number assigned to identify a Federal assistance listing. Formerly known as the CFDA Number.

Assistance listing program title means the title that corresponds to the Federal Assistance number. Formerly known as the CFDA program title.

Audit finding means deficiencies which the auditor is required by § 200.516 Audit findings, paragraph (a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term

auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Budget period means the time interval during which recipients are authorized to expend the current funds awarded and must meet the matching or cost-sharing requirement, if any.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under GASB standards or a finance lease under FSAB standards; and

(2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). For purpose of this Part, capital assets do not include intangible right-to-use assets (per GASB) and right to use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a

Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.343.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.331(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(1) For IHEs: Appendix III to Part 200, paragraph C.11.

(2) For nonprofit organizations: Appendix IV to Part 200, paragraph C.2.a.

(3) For state and local governments: Appendix V to Part 200, paragraph F.1.

(4) For Indian tribes: Appendix VII to Part 200, paragraph D.1.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also Supplies and Information technology systems.

Compliance supplement means an annually updated source of information for auditors to understand the Federal program's objectives, procedures, and compliance requirements relevant to the audit, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program Assistance listing title and number.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward. (see also *Subaward*).

Contractor means an entity that receives a contract as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

- (ii) An agreement that provides only:
- (A) Direct United States Government cash assistance to an individual;
 - (B) A subsidy;
 - (C) A loan;
 - (D) A loan guarantee; or
 - (E) Insurance.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

- (1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;
- (2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;
- (3) A focus on current conditions and corrective action going forward;
- (4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and
- (5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E of this part. See also *Final cost objective* and *Intermediate cost objective*.

Cost sharing or matching means the portion of project costs not paid by

Federal funds (unless otherwise authorized by Federal statute). See also § 200.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

Discretionary award means an award in which the awarding agency, in keeping with specific statutory authority which enable the agency to exercise judgement (“discretion”) in selection the grant award recipient through a competitive process or based on merit of existing grant recipients. Some discretionary grants to organizations may be awarded on a non-competitive basis, often based on congressional direction.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also *Capital assets*, *Computing devices*, *General purpose equipment*, *Information technology systems*, *Special purpose equipment*, and *Supplies*.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

- (i) Cash disbursements for direct charges for property and services;
- (ii) The amount of indirect expense charged;
- (iii) The value of third-party in-kind contributions applied; and
- (iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

- (i) Cash disbursements for direct charges for property and services;
- (ii) The amount of indirect expense incurred;
- (iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

- (A) Goods and other property received;
- (B) Services performed by employees, contractors, subrecipients, and other payees; and
- (C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition for Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

(1) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

- (i) Grants;
- (ii) Cooperative agreements;
- (iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;
 (v) Food commodities; and
 (vi) Other financial assistance (except assistance listed in paragraph (b) of this section).

(2) For § 200.203 and Subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

- (i) Loans;
- (ii) Loan Guarantees;
- (iii) Interest subsidies; and
- (iv) Insurance.

(3) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.329 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) Federal share of total project costs; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single Assistance listing number.

(2) When no Assistance listing number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

- (i) Research and development (R&D);
- (ii) Student financial aid (SFA); and
- (iii) "Other clusters," as described in the definition of Cluster of Programs.

Federal share means the portion of the federal award costs that are paid using Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions for *Cost objective* and *Intermediate cost objective* in this section.

Financial obligations, when used in connection with a non-Federal entity or recipient's utilization of funds under a Federal award, means orders placed for property and services, contracts and

subawards made, and similar transactions that require payment.

Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.201, 200.332(b) and 200.102(d).

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a Foreign Public Entity.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks,

information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also *Equipment* and *Special Purpose Equipment*.

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

- (i) Direct United States Government cash assistance to an individual;
- (ii) A subsidy;
- (iii) A loan;
- (iv) A loan guarantee; or
- (v) Insurance.

Highest level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the FAR (48 CFR 52 204–17).

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment. See definition of improper payment in OMB Circular A–123 Appendix C, Part I A (2) "What is an improper payment?" Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 Appendix C.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.

Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III to Part 200 through Appendix VII to part 200, and Appendix IX to part 200.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also *Computing devices* and *Equipment*.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also *Cost objective* and *Final cost objective*.

Internal controls for non-Federal entities means processes designed and implemented by non-Federal entities to provide reasonable assurance regarding

the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of reporting for internal and external use; and
- (3) Compliance with applicable laws and regulations.

(4) Internal controls Federal awarding agencies are required to follow are located in OMB Circular A-123.

Internal control over compliance requirements for Federal awards. Federal awarding agencies are required to follow internal control compliance requirements located in OMB Circular A-123.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of Program income in § 200.1 Definitions.

(1) The term “direct loan” means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term “direct loan obligation” means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term “loan guarantee” means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term “loan guarantee commitment” means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and
- (13) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal awarding agency’s or pass-through entity’s written determination, provided to the auditee, of the adequacy of the auditee’s proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase comprise a subset of a non-Federal entity’s small purchases as defined in § 200.319. Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see § 200.319). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the Federal Acquisition Regulation (FAR) at 48 CFR 2.101 (unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency).

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-discretionary award means an award made by the awarding agency as defined by statute to specific recipients, assuming recipient application meets

eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgment (“discretion”), due to “mandatory” award requirements, in selecting the applicant/recipient organization through a competitive process. Non-discretionary awards can be both formula and non-formula based.

Non-Federal entity (NFE) means a state, local government, Indian tribe, Institutions of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit; and
- (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The Notice of Funding Opportunity announcement provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) to a non-Federal entity not assigned a cognizant agency for audit. When the direct funding represents less than 25 percent of the total funding received from the non-Federal entity (as prime and subawards), then the Federal agency with the predominant amount of funding is the designated oversight agency for award. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Pass-through entity (PTE) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Participant support costs means direct costs for items such as stipends or

subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the anticipated time interval between the start and end date of an initial Federal award or Renewal. See also *Budget period* and *Renewal*.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See *Period of performance* in § 200.1) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on

advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407 *Prior written approval* (prior approval). See also 35 U.S.C. 200–212 “Disposition of Rights in Educational Awards” applies to inventions made under Federal awards.

Property means real property or personal property. See also *Real property* and *personal property*.

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also *Personally Identifiable Information* (PII).

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 Appendix C. (see also *Improper payment*)

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or an individual that is a beneficiary of the award.

Renewal means a subsequent Federal award to a current Federal award; each renewal must have a distinct period of performance.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.319). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the Federal Acquisition Regulation at 48 CFR subpart 2.1. Thresholds differ from the FAR. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures. States, IHEs and local governments should determine if local government laws on purchasing apply.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also *Equipment* and *General purpose equipment*.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070–1099d), which are administered by the U.S. Department of

Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Subsidiary means an entity in which more than 50 percent of the non-Federal entity is owned directly by a parent corporation or through another subsidiary of a parent corporation as defined in the FAR (48 CFR 52.209–10).

Supplies means all tangible personal property other than those described in the definition of *Equipment*. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also *Computing devices* and *Equipment*.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.*, property or services) that—

(1) Benefit a federally assisted project or program; and

(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity’s unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal’s budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

§§ 200.2 through 200.99 [Removed]

■ 48. Remove §§ 200.2 through 200.99

■ 49. Amend § 200.100 by revising paragraph (a)(1) to read as follow:

§ 200.100 Purpose.

(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive Order.

* * * * *

■ 50. Revise § 200.101 to read as follows:

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.

(b) *Applicability to different types of Federal awards.* (1) Throughout this part when the word “must” is used it indicates a requirement. Whereas, use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion.

(2) The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically

indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D of this part, §§ 200.330

through 200.332, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

TABLE 1 TO PARAGRAPH (b)

| The following portions of this part | Are applicable to the following types of Federal Awards and fixed-price contracts and subcontracts (except as noted in paragraphs (d) and (e) below): | Are NOT applicable to the following types of Federal Awards and fixed-price contracts and subcontracts: |
|---|--|--|
| Subpart A—Acronyms and Definitions Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures. §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures. | —All. —All. —Grant Agreements and cooperative agreements. | —Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts. |
| Subparts C–D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.330–332 Subrecipient Monitoring and Management. | —Grant Agreements and cooperative agreements. | —Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts. |
| § 200.203 Requirement to provide public notice of Federal financial assistance programs. | —Grant Agreements and cooperative agreements. | —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts. |
| §§ 200.303 Internal controls, 200.330–332 Subrecipient Monitoring and Management. | —Agreements for loans, loan guarantees, interest subsidies and insurance. | —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts. |
| Subpart E—Cost Principles | —All. | —Grant agreements and cooperative agreements providing foods commodities. |
| Subpart F—Audit Requirements | —Grant Agreements and cooperative agreements, except those providing food commodities. —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated. | —Fixed amount awards. —Agreements for loans, loans guarantees, interest subsidies and insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles). |
| Subpart F—Audit Requirements | —Grant Agreements and cooperative agreements. —Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation. —Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996. | —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation. |

(c) *Federal award of cost-reimbursement contract under the FAR to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract, only Subpart D of this part, §§ 200.330 through 200.332, subpart E of this part and subpart F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR contract and only have effect to the extent that they do not conflict with the FAR and the contract. When the Cost Accounting

Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR subpart 31.2 and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D of this part, §§ 200.330 through 200.332, subpart E of this part and subpart F of

this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.

(d) With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This

includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450—458ddd-2.

(e) Except for § 200.203, and §§ 200.330 through 200.332, the requirements in Subpart C, Subpart D, and Subpart E of this part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that Subpart E—Cost Principles of this Part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858)

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858)

(f) Except for § 200.203, the guidance in subpart C of this part does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance to Needy Families (title IV–A of the Social Security Act, 42 U.S.C. 601–619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Social Security Act, 42 U.S.C. 651–669b);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act, 42 U.S.C. 670–679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (e)(1) of this section;

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of

the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e));

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753),

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755),

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a),

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761), and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772),

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773), and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

■ 51. Amend § 200.102 by revising paragraphs (a), (c), and (d) to read as follows:

§ 200.102 Exceptions.

(a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only as described in paragraph (d) of this section or in unusual circumstances.

* * * * *

(c) The Federal awarding agency may apply more or less restrictive

requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when, required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.

(d) OMB encourages Federal awarding agencies to request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. OMB also encourages agencies to apply more restrictive terms and conditions when a risk-assessment indicates it may be merited.

■ 52. Revise § 200.110 to read as follows:

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates will remain in place until they are re-negotiated. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, Federal awarding and indirect cost rate negotiating agencies will use the Uniform Guidance both in generating proposals for and negotiating a new rate (when the rate is re-negotiated) for non-Federal entities.

■ 53. Revise Subpart C to read as follows:

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Sec.

200.200 Purpose.

200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

200.202 Program planning and design.

200.203 Requirement to provide public notice of Federal financial assistance programs.

200.204 Notices of funding opportunities.

200.205 Federal awarding agency review of merit of proposals.

200.206 Federal awarding agency review of risk posed by applicants.

200.207 Standard application requirements.

200.208 Specific conditions.

200.209 Certifications and representations.

- 200.210 Pre-award costs.
 200.211 Information contained in a Federal award.
 200.212 Public access to Federal award information.
 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.
 200.214 Suspension and debarment.
 200.215 Never contract with the enemy.
 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

§ 200.200 Purpose.

(a) Sections 200.201 through 200.209 prescribe instructions and other pre-award matters to be used in the announcement and application process.

(b) Use of §§ 200.204, 200.205, 200.206, and 200.208, is required only for competitive Federal awards, but may also be used by the Federal awarding agency for non-competitive awards where appropriate or where required by Federal statute.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.*, grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.332, may use fixed amount awards (see *Fixed amount awards* in § 200.1) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in

advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Program planning and design.

In designing the Federal financial assistance programs, the Federal awarding agency must establish program goals, objectives, and indicators at the assistance listing (*e.g.*, program) level, to the extent permitted by law. Program design must occur before the Federal awarding agency drafts the Notice of Funding Opportunity. The program goals and outcomes designed must be aligned with the Congressional intent of the program, agency leadership goals, as well as agency strategic plan and priority goals. Programs must be designed with clear goals and objectives to achieve intended results. Program goals, objectives and metrics for measuring performance must also be published in the assistance listing. Program design elements may include a problem or needs statement, goals and objectives, a logic model depicting the program’s structure, program activities, performance indicators to measure program accomplishments which may include independently available sources of data, learning communities which may benefit from a common understanding of promising practices, and a system to periodically review award selection criteria. Federal awarding agencies should use program design to inform the management of Federal awards at all stages of the financial assistance lifecycle. Federal awarding agencies are responsible for collecting relevant performance data to demonstrate the results of Federal

financial assistance programs. Federal awarding agencies are also responsible for ensuring taxpayer dollars are providing critical Federal services to citizens efficiently and cost-effectively while managing government programs, as described in the Program Management Improvement Accountability Act (Pub. L. 114–264), the OMB Memorandum M–18–19 (Improving the Management of Federal Programs and Projects through Implementing the Program Management Improvement Accountability Act) and OMB circular A–11 (Preparation, Submission, and Execution of the Budget). See also § 200.1 Definition for Assistance listing.

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal awarding agency must notify the public of Federal programs in the Assistance listings maintained by the General Services Administration (GSA).

(1) The Assistance listings is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Assistance listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance listing entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. At a minimum, Federal awarding agencies must submit the following information to GSA:

(1) *Program description, purpose, goals and measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate,

the Program description, purpose, goals, and measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan as required by Part 6 of OMB Circular A-11 and should support the Federal awarding agency's performance measurement, management, and any required reporting;

(2) *Identification.* Whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) *Projected total amount of funds available for the program.* Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) *Anticipated source of available funds:* The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));

(5) *General eligibility requirements:* The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and

(6) *Applicability.* The applicability of Single Audit Requirements as required by subpart F of this part.

§ 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Assistance listing number(s);

(6) *Key Dates.* Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) *Availability period.* The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) *Full text of funding opportunities.* The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I to Part 200.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.

(6) Federal Award Administration Information. See also § 200.211.

§ 200.205 Federal awarding agency review of merit of proposals.

For discretionary grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting the recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part.) See also § 200.204. The Federal awarding agency

must also systematically review award selection criteria for effectiveness.

§ 200.206 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of governmentwide data.* (1) Prior to making a Federal award, the Federal awarding agency is required by the Improper Payments Elimination and Recovery Improvement Act of 2012, 31 U.S.C. 3321, note and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112-239 National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIS with regard to the applicant and any immediate highest level owner, predecessor (i.e., a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208 Specific conditions.

(b) *Risk evaluation.* (1) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal

awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204 Notices of funding opportunities.

(2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

- (i) Financial stability;
- (ii) Quality of management systems and ability to meet the management standards prescribed in this part;
- (iii) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
- (iv) Reports and findings from audits performed under Subpart F of this part or the reports and findings of any other available audits; and
- (v) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(c) *Suspension and debarment compliance.* The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320, Controlling Paperwork Burdens on the Public and in alignment with OMB-approved, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will

authorize additional information collections only on a limited basis.

(b) If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.208 Specific conditions.

(a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.

(b) Risk-based specific conditions.
(1) The Federal awarding agency or pass-through entity may impose more or less restrictive or additional specific Federal award conditions as needed, in accordance with paragraphs (b)(2) and (3) of this section, based on an analysis of the following factors:

- (i) Based on the criteria set forth in § 200.206;
 - (ii) The an applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;
 - (iii) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or
 - (iv) A responsibility determination of an applicant or recipient
- (2) Additional Federal award conditions may include items such as the following:
- (i) Requiring payments as reimbursements rather than advance payments;
 - (ii) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given budget period;
 - (iii) Requiring additional, more detailed financial reports;
 - (iv) Requiring additional project monitoring;
 - (v) Requiring the non-Federal entity to obtain technical or management assistance; or
 - (vi) Establishing additional prior approvals.

(3) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:

- (i) The nature of the additional requirements;
- (ii) The reason why the additional requirements are being imposed;
- (iii) The nature of the action needed to remove the additional requirement, if applicable;
- (iv) The time allowed for completing the actions if applicable, and

(v) The method for requesting reconsideration of the additional requirements imposed.

(c) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

§ 200.211 Information contained in a Federal award.

A Federal award must include the following information:

(a) *Federal award performance goals.* The Federal awarding agency must include in the Federal award of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. In some instances (e.g., discretionary research awards), this must be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See

also OMB Circular A-11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.

(b) *General Federal Award Information.* The Federal awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.1 Definitions);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds

Obligated by this action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing or Matching, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing or Matching;

(11) Budget Approved by the Federal Awarding Agency;

(12) Federal award description, (to comply with statutory requirements (e.g., FFATA));

(13) Name of Federal awarding agency and contact information for awarding official,

(14) Assistance listing number and title;

(15) Identification of whether the award is R&D; and

(16) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(17) Performance goals, indicators, targets, baseline data, and data collection plan

(c) *General terms and conditions.* (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) *Administrative requirements.* These are implemented by the Federal awarding agency as specified in this part.

(ii) *National policy requirements.* These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) *Recipient integrity and performance matters.* If the total Federal share of the Federal award may include more than \$500,000 over the period of

performance, the Federal awarding agency must include the term and condition available in Appendix XII of this part. See also § 200.113.

(iv) *Future budget periods.* If it is anticipated that the period of performance will include multiple budget periods, the Federal awarding agency must indicate that subsequent budget periods are subject to the availability of funds, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Recipients must be made aware of the termination provisions in § 200.339, including the applicable termination provisions in the Federal awarding agency's regulations and in each Federal award.

(2) The Federal award must include wording to incorporate, by reference, all terms and conditions of the award. Any reference within the award to general terms and conditions must be to the website at which the Federal awarding agency maintains.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) *Federal awarding agency, program, or federal award specific terms and conditions.* The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions as required in § 200.208. Whenever practicable, these specific terms and conditions also should be shared on a public website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) *Prohibition of Including References to Non-Binding Guidance Documents.* Federal awarding agencies are prohibited from including references to non-binding guidance in the terms and conditions of award. As described in Executive Order (E.O.) 13891, references to non-binding guidance include references to promising practices and other documents that the inclusion of by reference carries the implicit threat of enforcement action. These resources may be shared outside of the terms and conditions for reference purposes.

(f) *Federal awarding agency requirements.* Any other information required by the Federal awarding agency.

§ 200.212 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 48 CFR subpart 42.15;

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in paragraph (a) of this section is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (i.e., the entity was determined to be qualified based on all factors other than those two standards), and

(2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and includes specific award terms and conditions, as described in § 200.208.

(c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—

(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110–417, as amended (41 U.S.C. 2313), then archived;

(3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and

(5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.

(d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

(2) Obtains an update to that information that could be helpful to

other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.215 Never contract with the enemy.

Federal awarding agencies and non-Federal entities are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. These regulations affect grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States, including U.S. territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

Grant, cooperative agreement, and loan recipients are prohibited from using government funds to enter into contracts (or extend or renew contracts) with entities that use covered technology. See section 889 of Public Law 115–232 (National Defense Authorization Act 2019).

■ 54. Amend § 200.300 by revising the first sentence of paragraph (a) to read as follows:

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. * * *

* * * * *

■ 55. Revise § 200.301 to read as follows:

§ 200.301 Performance measurement.

The Federal awarding agency must measure the recipient's performance in a way that will help the Federal awarding agencies and non-Federal entities to achieve program goals and objectives, share lessons learned, and foster adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient's progress but also to facilitate identification of promising practices among recipients and build evidence upon which the Federal awarding agency's program and performance decisions are made. This provision is designed to operate in tandem with evidence-related statutes (e.g.; The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government) and related OMB implementation guidance (e.g.; OMB Memorandum M–19–23: Phase 1 implementation of the Foundations for Evidence-Based Policymaking Act of 2018. Learning Agendas, Personnel, and Planning Guidance). The Federal awarding agency must also require the recipient to use OMB-approved common information collections, as applicable, when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency should require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned common information collections, and when applicable, recipients should also provide cost information to demonstrate cost

effective practices (e.g., through unit cost data). In some instances (e.g., discretionary research awards), these requirements may be limited to the submission of technical performance reports (to be evaluated in accordance with agency policy). The Federal awarding agency should also specify any requirements of award recipients' participation in a Federally-funded evaluation, and any evaluation activities required to be conducted by the Federal award.

§ 200.302 [Amended]

■ 56. Amend § 200.302 as follows:

■ a. In paragraph (b)(1) remove the term "CFDA" and add, in its place, "Assistance listing".

■ b. In paragraph (b)(3) remove the word "obligations" and add, in its place, "financial obligations".

■ 57. Amend § 200.303 by revising paragraphs (b) and (e) to read as follows:

§ 200.303 Internal controls.

* * * * *

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.

* * * * *

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and responsibility over confidentiality.

■ 58. Revise § 200.305 to read as follows:

§ 200.305 Federal payment.

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains

or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that

reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, § 200.338, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions,

but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.342.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than \$250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

(i) For returning interest on Federal awards paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the PMS Payee Account Number(s) (PANs);

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(ii) For returning interest on Federal awards not paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) Include the name of the awarding agency;

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:

(i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.

(ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.

(iii) The reason for the return (*e.g.*, excess cash, funds not spent, interest, part interest part other, etc.)

(11) When returning funds or interest to PMS you must include the following as applicable:

(i) For ACH Returns:

Routing Number: 051036706.

Account number: 303000.

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN.

(ii) For Fedwire Returns *:

Routing Number: 021030004.

Account number: 75010501.

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY.

(* Please note organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment)

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS).

Bank: Citibank N.A. (New York).

Swift Code: CITIUS33.

Account Number: 36838868.

Bank Address: 388 Greenwich Street, New York, NY 10013 USA.

Payment Details (Line 70): Agency Locator Code (ALC): 75010501.

Name (abbreviated when possible) and ALC Agency POC.

(iv) For recipients that do not have electronic remittance capability, please make check ** payable to: “The Department of Health and Human Services.”

Mail Check to Treasury approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353–0231.

(** Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Questions can be directed to PMS at 877–614–5533 or *PMSSupport@psc.hhs.gov*.

§ 200.306 [Amended]

■ 59. In § 200.306 paragraph (a) remove “200.203” and add, in its place, “200.204”.

■ 60. Amend § 200.307 by revising paragraphs (d) and (g) to read as follows:

§ 200.307 Program income.

* * * * *

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D of this part, §§ 200.310, 200.312, and 200.313, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

* * * * *

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

■ 61. Revise § 200.308 to read as follows:

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see Federal share in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans must include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E of this part or 45 CFR part 75 Appendix IX, or 48 CFR part 31, as applicable.

(5) The transfer of funds budgeted for participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(8) The need arises for additional Federal funds to complete the project.

(d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.

(e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is authorized, at its option, to waive other cost-related and administrative prior written approvals contained in Subparts D and E. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the Federal

awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent budget periods.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).

(h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions

whenever paragraph (h)(1), (2), or (3) of this section applies:

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 [Removed]

■ 62. Remove § 200.309.

§§ 200.310 through 200.321 [Redesignated]

■ 63. Redesignate §§ 200.310 through 200.321 to §§ 200.309 through 200.320.

■ 64. Amend newly redesignated § 200.310 to revise paragraph (a) to read as follows:

§ 200.310 Real property.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

* * * * *

■ 65. Amend newly redesignated § 200.311 by revising the first sentence of paragraph (c) to read as follows:

§ 200.311 Federally-owned and exempt property.

* * * * *

(c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. * * *

■ 66. Amend newly redesignated § 200.312 by revising paragraph (a), paragraph (c) introductory, paragraph (e)(1) and the first sentence of (e)(2) to read as follows:

§ 200.312 Equipment.

* * * * *

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

* * * * *

(c) * * * (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

* * * * *

(e) * * *

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.

(2) Except as provided in § 200.311 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. * * *

* * * * *

■ 67. Amend newly redesignated § 200.313 by revising the last sentence of paragraph (a) to read as follows:

§ 200.313 Supplies.

* * * * *

(a) * * * See § 200.312(e)(2) for the calculation methodology.

■ 68. Amend the newly redesignated § 200.314 by revising paragraph (a) to read as follows:

§ 200.314 Intangible property.

(a) Title to intangible property (see Intangible property in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.312(e).

* * * * *

■ 69. Amend the newly redesignated § 200.316 by revising the last sentence to read as follows:

§ 200.316 Procurements by states.

* * * All other non-Federal entities, including subrecipients of a state, will follow §§ 200.317 through 200.326.

■ 70. Amend the newly redesignated § 200.317 by revising the last sentence of paragraph (h) to read as follows:

§ 200.317 General procurement standards.

* * * * *

(h) * * * See also § 200.213.

■ 71. Revise the newly redesignated § 200.318 to read as follows:

§ 200.318 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.319, Methods of procurement to be followed.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws.

When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are

used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.319(b)(3).

■ 72. Revise the newly redesignated § 200.319 to read as follows:

§ 200.319 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures for the following methods of procurement for the acquisition of property or services required under a Federal award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold, as defined in § 200.1 Definitions, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The following informal methods of procurement used for procurement of property or services at or below the simplified acquisition threshold include:

(1) *Micro-purchases.* (i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See Micro-purchase in § 200.1 Definitions). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable and can include the use of purchase cards if documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds that differ from the FAR. The non-Federal entity is responsible for determining an appropriate micro-purchase threshold based on internal controls, an evaluation of risk and its documented procurement procedures. All non-Federal entities can establish lower thresholds. However, a non-Federal entity may request a higher micro-purchase threshold in accordance to section (iv) below. When applicable, the micro-purchase threshold used by the non-Federal entity must be authorized

or not prohibited under State, local, or tribal laws or regulations.

Requests for approval of a higher threshold must be submitted to the cognizant Federal agency for indirect cost rates (see Cognizant agency for indirect costs) for review and approval.

(iv) Cognizant agency for indirect cost evaluation of higher threshold requests are performed to determine if an entity is low risk (see § 200.520 Criteria for a low-risk auditee) and must include at a minimum a review of the entity's audit findings and any appropriate internal institutional risk assessments. Values used to set micro-purchase thresholds must also be consistent with any applicable state laws.

(2) *Small purchases.* (i) The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(ii) Simplified acquisition thresholds that differ from the FAR. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, the simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the simplified acquisition threshold (SAT) (*Simplified acquisition threshold*), or a threshold established by a non-federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.318 Competition. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid,

conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals.* A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(3) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see § 200.319(a)(1));

(ii) The item is available only from a single source;

(iii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iv) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(v) After solicitation of a number of sources, competition is determined inadequate.

■ 73. Add § 200.321 to read as follows:

§ 200.321 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This term must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this award term:

(1) "Produced in the United States" means, for iron and steel products, that

all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

■ 74. Amend § 200.325 by revising paragraph (b) to read as follows:

§ 200.325 Bonding requirements.

* * * * *

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

* * * * *

■ 75. Amend § 200.327 by revising the first sentence to read as follows:

§ 200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. * * *

■ 76. Amend § 200.328 by revising paragraph (b) introductory text, paragraph (b)(1), and paragraph (b)(2) introductory text to read as follows:

§ 200.328 Monitoring and reporting program performance.

* * * * *

(b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future OMB-approved, governmentwide data elements available from the OMB-designated standards lead.

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly

affect program outcomes. Annual reports must be due 120 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 120 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide common information collections when providing performance information. As applicable, these information collections must use OMB-approved, governmentwide data elements available from the OMB-designated standards lead. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

* * * * *

■ 77. Amend § 200.330 by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 200.330 Subrecipient and contractor determinations.

* * * * *

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See Subaward in § 200.1. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

* * * * *

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See Contract in § 200.1. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

* * * * *

■ 78. Revise § 200.331 to read as follows:

§ 200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward

and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal award identification:
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see Federal award date in § 200.1) of award to the recipient by the Federal agency;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Subaward Budget Period Start and End Date;
 - (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
 - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
 - (xii) Assistance listing number and title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance listing number at time of disbursement;
 - (xiii) Identification of whether the award is R&D; and
 - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
- (4) An approved federally recognized indirect cost rate negotiated between the

subrecipient and the Federal Government. The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a federally approved rate. If no federally approved rate exists, the pass-through entity must accept:

- (i) The negotiated indirect cost rate between the pass-through entity and the subrecipient;
- (ii) The negotiated indirect cost rate between a different pass-through entity and the subrecipient; or
- (iii) The de minimis indirect cost rate;
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.
 - (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
 - (1) The subrecipient's prior experience with the same or similar subawards;
 - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of Federal awarding agency monitoring (*e.g.*, if the subrecipient also receives Federal awards directly from a Federal awarding agency).
 - (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.
 - (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
 - (1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. Other means may include written confirmation from the subrecipient related to the Single Audit already performed and any audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) The pass-through entity is only responsible for resolving audit findings specifically related to the subaward (*i.e.*, non-systemic) and not applicable to the entire subrecipient (*i.e.*, systemic). If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (*e.g.*, has been debarred or suspended), the pass-through entity may rely on the subrecipient's auditors and cognizant agency for routine audit follow-up and management decisions. Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward issued by the pass-through entity.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters; and
- (2) Performing on-site reviews of the subrecipient's program operations;
- (3) Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions

that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.338 Remedies for noncompliance of this part and in program regulations.

■ 79. Revise § 200.335 to read as follows.

§ 200.335 Methods for collection, transmission and storage of information.

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.337 [Amended]

■ 80. Amend § 200.337 by removing “§ 200.315 Intangible property” and adding, in its place, “§ 200.314”.

■ 81. Amend § 200.338 by revising the introductory text to read as follows:

§ 200.338 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

* * * * *

■ 82. Revise § 200.339 to read as follows:

§ 200.339 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency must specify applicable termination provisions in its regulations and in each Federal award, consistent with this section.

(c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (b) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—

(i) Has exhausted its opportunities to object or challenge the decision, see § 200.341 Opportunities to object, hearings and appeals; or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

(i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.343 and 200.344.

■ 83. Revise § 200.340 paragraph (b) introductory text to read as follows:

§ 200.340 Notification of termination requirement.

* * * * *

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

* * * * *

§ 200.342 [Amended]

■ 84. Amend § 200.342 by removing the term “obligations” wherever it appears

and adding, in its place “financial obligations”.

■ 85. Revise § 200.343 to read as follows:

§ 200.343 Closeout.

The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close-out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A–129 and see § 200.345, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement

for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.309 through 200.315 and 200.329.

(g) When a recipient or subrecipient completes all closeout requirement, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section, and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to closeout with the information available, within one year of the period of performance end date. The Federal awarding agency must report the non-Federal entity’s failure to submit required reports to the OMB-designated integrity and performance system (currently FAPIIS) as the non-Federal entity’s material failure to comply with the terms and conditions of the award. Federal awarding agencies may also pursue other enforcement actions per § 200.338.

■ 86. Revise § 200.344 to read as follows:

§ 200.344 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award.

(4) Audit requirements in Subpart F of this part.

(5) Property management and disposition requirements in Subpart D of this part, §§ 200.309 through 200.315.

(6) Records retention as required in Subpart D, §§ 200.333 through 200.337.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

■ 87. Amend § 200.400 by revising the last sentence of paragraph (e) to read as follows:

§ 200.400 Policy guide.

* * * * *

(e) * * * See Indirect (facilities & administrative (F&A)) costs in § 200.1.

* * * * *

■ 88. Amend § 200.401 by revising paragraph(a)(3) to read as follows:

§ 200.401 Application.

* * * * *

(3) Fixed amount awards. See also § 200.1 and 200.201.

* * * * *

■ 89. Revise § 200.402 to read as follows:

§ 200.402 Composition and timing of costs.

(a) *Total cost.* The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

(b) *Timing of costs.* Costs must be charged to the approved budget period in which they were incurred except where noted in the specific cost principle.

■ 90. Amend § 200.403 by revising paragraph (g) to read as follows:

§ 200.403 Factors affecting allowability of costs.

* * * * *

(g) Be adequately documented. See also §§ 200.300 Statutory and national policy requirements through 200.308 Revision of budget and program plans of this part.

■ 91. Revise § 200.405 paragraph (d) to read as follows:

§ 200.405 Allocable costs.

* * * * *

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be

determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.309 through 200.315 and 200.439.

* * * * *

■ 92. Amend § 200.407 by revising paragraphs (e) and (f) to read as follows:

§ 200.407 Prior written approval (prior approval).

* * * * *

- (e) § 200.310 Real property;
- (f) § 200.312 Equipment;

* * * * *

■ 93. Amend § 200.410 by revising the last sentence to read as follows:

§ 200.410 Collection of unallowable costs.

* * * See also Subpart D of this part, §§ 200.300 through 200.308.

■ 94. Amend § 200.413 by revising paragraph (b) to read as follows:

§ 200.413 Direct costs.

* * * * *

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct cost, examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.

* * * * *

■ 95. Amend § 200.414 by revising paragraphs (a), (c)(4), and (f) and adding paragraph (h) to read as follows:

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director’s office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for IHEs, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200, and Rate Determination for Institutions of Higher Education paragraph C.11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

* * * * *

(c) * * *

(4) As required under § 200.204 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

* * * * *

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity, except for those non-Federal entities described in Appendix VII to Part 200, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to provide proof of costs that are covered under the de minimis indirect cost rate. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as

both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

* * * * *

(h) All rate agreements from non-Federal entities must be available publicly on an OMB-Designated Federal website.

■ 96. Amend § 200.419 by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 200.419 Cost accounting standards and disclosure statement.

* * * * *

(b) * * *

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE’s cognizant agency for audit. The initial DS–2 and revisions to the DS–2 must be submitted in coordination with the IHE’s F&A rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202–1(f) must submit their initial DS–2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.

(2) An IHE must maintain an accurate DS–2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with § 200.102(b). Amendments of a DS–2 may be submitted at any time. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

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■ 97. Amend § 200.430 by revising paragraph (h) introductory text and the first two sentences of paragraph (h)(3) to read as follows:

§ 200.430 Compensation—personal services.

* * * * *

(h) *Institutions of Higher Education (IHEs).*

* * * * *

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. * * *

* * * * *

■ 98. Revise § 200.431 to read as follows.

§ 200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits

are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the

cost is reported as taxable income to the employees.

(g) *Pension Plan Costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(4) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(5) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a

fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a

period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of

employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated

indirect (F&A) cost rates containing unallowable costs of this subpart;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.433 [Amended]

■ 99. In § 200.433 amend paragraph (b) by removing the words “200.309 Period of Performance” and adding, in its place, “200.308 Revision of budget and program plans”.

§ 200.434 [Amended]

■ 100. In § 200.434 amend paragraph (g)(2) by removing the words “200.309 Period of Performance” wherever it appears and adding, in its place, “200.308”.

■ 101. Amend § 200.436 by revising paragraph (c) introductory text, paragraphs (c)(3), (c)(4), and (e) and adding paragraph (c)(5) to read as follows:

§ 200.436 Depreciation.

* * * * *

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:

* * * * *

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;

(4) Any asset acquired solely for the performance of a non-Federal award; and

(5) Assets that were directly paid for and expensed using Federal financial assistance.

* * * * *

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

■ 102. Amend § 200.439 by revising paragraph (a), paragraph (b)(3), and (b)(7) to read as follows:

§ 200.439 Equipment and other capital expenditures.

(a) See the definitions for Capital expenditures, Equipment, Special purpose equipment, General purpose equipment, Acquisition cost, and Capital assets in § 200.1.

(b) * * *

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.

* * * * *

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

■ 103. Revise § 200.433 paragraph (d) to read as follows:

§ 200.443 Gains and losses on disposition of depreciable assets.

* * * * *

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.309 through 200.315.

■ 104. Revise § 200.444 paragraph (b) to read as follows:

§ 200.444 General costs of government.

* * * * *

(b) For Indian tribes and Councils of Governments (COGs) (see Local government in § 200.1), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

■ 105. Amend § 200.449 by revising paragraphs (b)(1) and (c)(4) to read as follows:

§ 200.449 Interest.

* * * * *

(b)(1) Capital assets is defined as noted in the definition of Capital assets in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

* * * * *

(c) * * *

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive

alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

* * * * *

■ 106. Revise § 200.456 to read as follows:

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 and are allowable with the prior approval of the Federal awarding agency.

■ 107. Amend § 200.458 by revising the last sentence to read as follows:

§ 200.458 Pre-award costs.

* * * If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency.

■ 108. Amend § 200.461 by revising paragraph (b)(3) to read as follows:

§ 200.461 Publication and printing costs.

* * * * *

(b) * * *

(3) The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

■ 109. Amend § 200.465 by

■ a. Redesignating paragraph (c)(5) as paragraph (d).

■ b. Redesignating paragraph (c)(6) as paragraph (f);

■ c. Revising newly redesignated paragraph (d); and

■ d. Adding paragraph (e).
The addition and revision to read as follows:

§ 200.465 Rental costs of real property and equipment.

* * * * *

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449 Interest.

Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance to GAAP.

* * * * *

■ 110. Amend § 200.509 by revising paragraph (a) to read as follows:

§ 200.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.316 through 20.326 or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization’s peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women’s business enterprises, in procuring audit services as stated in § 200.320, or the FAR (48 CFR part 42), as applicable.

* * * * *

■ 111. Amend § 200.510 by revising paragraph (b)(3) to read as follows:

§ 200.510 Financial statements.

* * * * *

(b) * * *

(3) Provide total Federal awards expended for each individual Federal program and the Assistance listing number or other identifying number when the Assistance listings information is not available. For a cluster of programs also provide the total for the cluster.

* * * * *

■ 112. Amend 200.513 by revising paragraphs (a)(1), (a)(3)(ii), (a)(3)(vii), paragraph (b) introductory text, paragraph (c) introductory text, and paragraph (c)(3)(iii) to read as follows:

§ 200.513 Responsibilities.

(a)(1) *Cognizant agency for audit responsibilities.* A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (direct funding) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total funding received by the non-Federal entity (as prime and sub awards), then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

* * * * *

(3) * * *

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agency. This governmentwide audit quality project must be performed once every 6 years beginning with audits submitted in 2021 or at such other interval as determined by OMB, and the results must be public.

* * * * *

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in § 200.1) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

* * * * *

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with the Oversight agency for audit. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the

oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

* * * * *

(c) *Federal awarding agency responsibilities.* The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):

* * * * *

(3) * * *

(iii) Use cooperative audit resolution mechanisms (see Cooperative audit resolution) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

* * * * *

■ 113. Revise § 200.515 paragraph (a) to read as follows:

§ 200.515 Audit reporting.

* * * * *

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory) and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

* * * * *

§ 200.516 [Amended]

■ 114. Amend § 200.516 by removing “CFDA” wherever it appears and adding, in its place, “Assistance listing”.

■ 115. Amend Appendix I to Part 200 by revising paragraphs (A), the first paragraph of (B), paragraphs (D)(3), (D)(4), (D)(5), (E)(3), (E)(3)(iii), and (F)(1) to read as follows:

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

* * * * *

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency’s funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This

section must include program goals and objectives, a reference to the relevant assistance listing, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance indicators and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

* * * * *

D. * * *

3. Unique entity identifier and System for Award Management (SAM)—Required.

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

- (i) Be registered in SAM before submitting its application;
- (ii) Provide a valid unique entity identifier in its application; and
- (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times—Required. Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are

separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.204).

* * * * *

5. Intergovernmental Review—Required, if applicable. If the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” the notice must say so and applicants must contact their state’s Single Point of Contact (SPOC) to find out about and comply with the state’s process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget’s website.

* * * * *

E. * * *

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:

* * * * *

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant’s integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

* * * * *

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency’s practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity’s own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

* * * * *

■ 116. Amend Appendix II to Part 200 revising paragraph (A) and adding paragraph (K) to read as follows:

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

* * * * *

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

* * * * *

(K) See § 200.216.

■ 117. Amend Appendix III to Part 200 by

- a. Revising paragraphs (B)(4)(c)(2)(ii)(B) and (C)(2);
- b. Redesignating paragraph (C)(7)(7) as paragraph (C)(7)(a);
- c. Revising paragraph (C)(11)(a)(1); and
- d. Revising paragraph (E).

The revisions read as follows:

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

* * * * *

- B. * * *
- 4. * * *
- c. * * *
- 2. * * *
- (ii) * * *

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory “Labs for the 21st Century” benchmarking tool and the US Department of Energy “Buildings Energy Databook” and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

* * * * *

C. * * *

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1 Definitions. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is

of the modified total direct costs identified with such pool.

* * * * *

11. * * *

a. * * *

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see § 200.331 Requirements for pass-through entities.

E. *Documentation requirements.* The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

* * * * *

■ 118. Amend Appendix IV to Part 200 by revising paragraphs (B)(2)(c), (B)(3)(f) and (C)(2)(a) to read as follows:

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

* * * * *

B. * * *

2. * * *

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for \$25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

* * * * *

3. * * *

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.1 Definitions of Part 200).

* * * * *

C. * * *

2. * * *

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414 Indirect (F&A) costs of Part 200.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible

for the negotiation of the indirect cost rates in accordance with section 200.331(a)(4).

* * * * *

■ 119. Amend Appendix V to Part 200 by revising the last sentence of paragraph (A)(2) and paragraph (B)(4) to read as follows:

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. * * *

2. * * * A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

B. * * *

4. *Cognizant agency for indirect costs* is defined in § 200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1, Negotiation and Approval of Central Service Plans.

* * * * *

■ 120. Amend Appendix VII to Part 200 by revising the last sentence of paragraph (A)(3) to read as follows:

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

A. * * *

3. * * * A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.

* * * * *

■ 121. Revise Appendix XI to Part 200 to read as follows:

Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB website.

[FR Doc. 2019-28524 Filed 1-21-20; 8:45 am]

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H.R. 2385/P.L. 116-107

To permit the Secretary of Veterans Affairs to establish a

grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program. (Jan. 17, 2020; 133 Stat. 3292)
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